

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



DN

JUN 08 2004

FILE: LIN 03 012 53519 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED] states that it is a joint venture of [REDACTED] [REDACTED] located in Canada. The petitioner is engaged in the business of manufacturing double shotguns and double rifles. The U.S. entity is a partnership formed in the State of Michigan in June 1997. In October 2002, the U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1B) specialized knowledge worker pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner seeks to employ the beneficiary's services as the U.S. entity's production manager.

On April 4, 2003, the director denied the petition because the petitioner failed to establish: 1) a qualifying relationship existed between the petitioner and the foreign entity; 2) the beneficiary has at least one continuous year of full-time employment abroad with the foreign entity; 3) the beneficiary's duties in the United States are those of a specialized knowledge worker; and, 4) the United States entity has been doing business for the previous year on a regular, systematic, and continuous basis.

On appeal, the beneficiary asserts, "I am a full partner and own 50% of the partnership with equal control. I have over 3 years full time employment by the partnership, and have unique and specialized knowledge and experience in the design and manufacture of very specialized firearms being manufactured." The petitioner submits additional documentation in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Pursuant to 8 C.F.R. § 214.2(l)(3), an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

In addition, the regulation at 8 C.F.R. § 214.2(l)(ii)(G) defines the term "qualifying organization" as:

(G) Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The first issue is whether a qualifying relationship exists between the petitioner and foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides that a qualifying organization must satisfy "exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary. . . ." The regulation defines these terms to mean:

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operation division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the initial petition, submitted on October 17, 2002, the petitioner indicated that it is a joint venture, and stated the "U.S. company totally controlled by [redacted] Canadian company totally controlled by [the beneficiary]. The name of the foreign employer is stated as [redacted]. The petitioner submitted the Form I-129 without supporting documents.

On December 11, 2002, the director requested additional evidence to show that the petitioner and foreign entity have a qualifying relationship. In particular, the director requested evidence that shows the common ownership and control between the foreign entity and the United States entity.

In response, the petitioner submitted a copy of its partnership agreement, Form SS-4, and Schedule K-1 of Forms 1065 for the beneficiary only for 2002, 2001, 2000, 1999, 1998, and 1997.

On April 4, 2003, the director denied the petition. The director stated that the evidence was insufficient to establish the ownership and control of the U.S. entity.

On appeal, the beneficiary asserts, "I am a full partner and own 50% of the partnership with equal control." The petitioner resubmitted copies of its tax forms and partnership agreement.

On review, there is insufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). On the Form I-129, the petitioner claims that the U.S. organization is a joint venture of the foreign company. Contrary to this statement, the petitioner cannot be a joint venture. *Matter of Hughes* states that a joint venture is a "business enterprise in which two or more economic entities from different countries participate on a permanent basis." *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982)(quoting a definition from [redacted] *International Business Enterprise* (Prentice Hall,

1973)). The U.S. entity was formed based upon a partnership agreement between two individuals. Neither the beneficiary nor his partner would be considered "an economic entity."

Furthermore, the petitioner has not demonstrated the existence of a foreign entity as a basis for establishing a qualifying relationship. The beneficiary's current foreign employer is identified as [REDACTED] but the petitioner has not established that the beneficiary himself, a self-employed individual, can be considered an entity for immigration purposes. Absent evidence that the beneficiary has registered with the appropriate Canadian authorities to do business as a sole proprietorship, the AAO cannot find that the proposed U.S. employer has any qualifying relationship with a legal entity in a foreign country as required by 8 C.F.R. § 214.2(l)(ii)(G). 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)).

Finally, even if the petitioner had established that the beneficiary does business as a sole proprietorship in Canada, the petitioner has not submitted any evidence to establish that the foreign sole proprietorship would continue to do business upon the beneficiary's transfer to the United States, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). A sole proprietorship is a business in which one person owns all of the assets and operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed.). If it is established that the beneficiary is the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States would raise the question of whether the foreign business could continue to do business abroad.

After careful consideration of the evidence, the AAO concludes that the petitioner has not established the existence of a qualifying organization in a foreign country. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioning organization has been doing business for the previous year.

The regulation at 8 C.F.R. §§ 214.2(l)(1)(ii)(F) and (H) defines "new office" and "doing business" as:

(F) New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

(H) Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

Initially, the petitioner did not submit sufficient evidence to establish that it had been doing business for the previous year. On the Form I-129, the petitioner indicated that it has no employees and indicated "N/A" rather than providing its gross and net annual income. On December 11, 2002, the director requested additional evidence to show that the United States entity has been doing business for the previous year.

In response, the petitioner submitted partial copies of its Forms 1065 partnership tax returns from 1997 until 2002, and a copy of its partnership agreement. The petitioner claimed, "we are now in production and in January 2003 began accepting orders."

On April 4, 2003, the director denied the petition because the petitioner failed to establish that the United States entity has been doing business for the previous year on a regular, systematic, and continuous basis. The director determined that the U.S. entity had not been doing business pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H).

On appeal, the beneficiary asserts, "the partnership has been in effect for 5 years and has been able to manufacture and provide firearms for sale since March 2001."

On review, the petitioner has not established that the U.S. entity has been doing business on a regular, systematic, and continuous basis pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner submitted insufficient documentation to establish that the U.S. entity was doing business and failed to establish that the organization has generated any income from sales. Partial copies of Forms 1065 are simply insufficient to meet the petitioner's burden. Again, 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.

Further, the petitioner in response to the director's request for additional evidence, claimed in a signed letter, dated February 27, 2003, that "we are now in production and in January 2003 began accepting orders." However, on appeal, the petitioner claimed that it has been "providing to the public since March 2001." These assertions are contradictory and cast doubt on the petitioner's business operations. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

After careful consideration, the AAO concludes that the petitioner has not demonstrated that the U.S. entity has been doing business regularly, systematically, and continuously as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). For this reason, the petition may not be approved.

The third issue in this proceeding is whether the beneficiary had at least one continuous year of full-time employment abroad with the foreign entity is required by 8 C.F.R. § 214.2(l)(3)(iii).

On the Form I-129, the petitioner indicated that the beneficiary had been employed by the foreign entity since 1982. The petitioner also indicated that the beneficiary was self-employed for 35 years.

On December 11, 2002, the director requested that the petitioner establish that the beneficiary had at least one continuous year of full-time employment abroad within the three years immediately prior to filing the petition.

In response, the petitioner submitted copies of the beneficiary's tax Forms 1065 from 1997 until 2002 and the Form SS-4. The petitioner stated that "since our founding in 1997, [the beneficiary] has supervised [and] directed our design, process and overseen the production and testing of several proto-type Double Barreled Rifles."

On April 4, 2003, the director denied the petition because the petitioner failed to establish the beneficiary had at least one continuous year of full-time employment abroad with the petitioner or foreign entity.

On appeal, the beneficiary asserts, "I have over 3 years full time employment by the partnership, and have unique and specialized knowledge and experience in the design and manufacture of very specialized firearms being manufactured." The petitioner submitted a copy of the beneficiary's work history and resubmitted the income Forms 1065 and the Form SS-4.

On review, the AAO is not persuaded that the beneficiary had been employed for at least one continuous year out of the last three years with a qualifying organization abroad. The beneficiary's resume and unsupported statements are not acceptable substitutes for documentary evidence establishing that he worked for a foreign qualifying organization for one continuous year out of the three years preceding the filing of the instant petition. As previously stated, 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.

The fourth issue in this proceeding is whether the beneficiary possesses specialized knowledge and whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or

an advanced level of knowledge or expertise in the organization's processes and procedures.

On the Form I-129, the petitioner described the beneficiary's proposed U.S. duties as "making double barreled shotguns [and] double barreled rifles."

In his request for evidence, the director requested evidence that the beneficiary's duties abroad and proposed U.S. duties meet the criteria as managerial or executive, or as a position requiring specialized knowledge.

In response, the petitioner stated, "[the beneficiary] has supervised and directed our design process and overseen the production and testing of several proto-type Double Barrelled Rifles. His expertise in this area is unequaled and fundamental [sic] To our progress and viability."

On April 4, 2003, the director denied the petition. The director determined that the record did not establish employment of the beneficiary in a position that requires specialized knowledge, nor did it establish that the beneficiary possesses specialized knowledge.

On appeal, the petitioner claims that the beneficiary has "unique and specialized knowledge and experience in the design and manufacture of very specialized firearms being manufactured." The petitioner submits a resume describing the beneficiary's work history.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(I)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the intended position in the United States requires specialized knowledge. In the present matter, the petitioner has provided a vague description of the beneficiary's intended employment in the U.S. entity, and his responsibilities as a production manager. For example, the beneficiary's proposed U.S. duties are described as "established the assembly and fitting process" and "making double barreled shotguns [and] double barreled rifles." Based on this vague description, it is unclear exactly what responsibilities the beneficiary will have to distinguish him as an employee with specialized knowledge. 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.

In addition, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner claimed that the beneficiary's "contribution is based on his prior experience." The petitioner, however, offers no explanation as to the educational or work qualifications necessary for this position. Nor does the petitioner provide documentation that the beneficiary actually received work assignments as listed on the work history document. While the petitioner asserts that the beneficiary has "unique and specialized knowledge and experience in the design and manufacture of very specialized firearms being manufactured," the lack of specificity pertaining to the beneficiary's work experience and training, and lack of employees to compare with the beneficiary, fails to distinguish

the beneficiary's knowledge as specialized. Without documentary evidence to support the claim, the assertions of the petitioner will not satisfy the petitioner's burden of proof. The assertions of the petitioner do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).<sup>1</sup> As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

*Id.* at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose experience enable him to provide skilled labor, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on

---

<sup>1</sup> Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.")

While the beneficiary's knowledgeable contribution to the partnership may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the company's processes and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

Further, the record does not establish that the proposed U.S. position requires specialized knowledge. The petitioner explained that "there is no other individual available, on this continent, (outside of England and Italy), who is competent to adequately perform these functions at the this time." However, there is no documentation, other than the petitioner's assertions, that a production manager must possess advanced, "specialized knowledge" as defined in the regulations and the Act. Again, without documentary evidence to support the claim, the assertions of the petitioner will not satisfy the petitioner's burden of proof. The assertions of the petitioner do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the

beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the petition may not be approved.

While not directly addressed by the director, the record contains insufficient documentation to persuade the AAO that the beneficiary has been employed in a specialized knowledge capacity abroad as defined at section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). On review, the petitioner fails to articulate how the beneficiary possessed specialized knowledge and how the proposed employment is in a capacity that requires specialized knowledge. For example, on the Form I-129, the petitioner described the beneficiary's foreign duties as: "gunmaking [and] gunsmithing of double barreled rifles and shotguns." The beneficiary's duties were also described in the beneficiary's personal resume as someone who provided "expert testimony and consulting services." However, based upon the vague description describing the beneficiary's duties abroad, the AAO is unable to evaluate whether the beneficiary has been employed in a specialized knowledge capacity abroad. For this additional reason, the petition may not be approved.

Additionally, it remains to be determined that the beneficiary's services would be for a temporary period. The regulation at 8 C.F.R. § 214.2(1)(3)(vii) states that if the beneficiary is an owner of the business, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States. For these further reasons, the petition may not be approved.

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). For this additional reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.