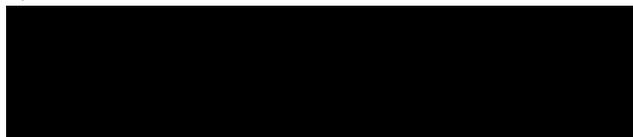


U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: LIN 01 253 53748 Office: NEBRASKA SERVICE CENTER Date: OCT 20 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

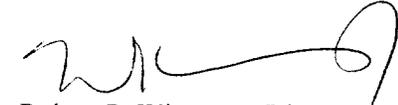
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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

Identifying data deleted to
prevent the unwarranted
invasion of personal privacy

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

The petitioner states that it is a non-profit corporation engaged in the marketing and implementation of its economic development program. It seeks to employ the beneficiary temporarily in the United States as a marketing and sales director. The director determined that the evidence submitted by the petitioner was not sufficient to establish that (1) a qualifying relationship exists between the U.S. and foreign entities; and (2) the beneficiary possesses specialized knowledge, and will be employed in a specialized knowledge capacity.

On appeal, counsel for the petitioner disagrees with the director's decision and states that the evidence submitted is sufficient to establish a qualifying relationship between the U.S. and foreign entities, and that the beneficiary possesses specialized knowledge.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). 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. In addition, 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.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that 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.

According to the evidence contained in the record, the petitioner claims to be an affiliate of Sirolli Institute Canada Ltd. The petitioner was incorporated in 1996 and states that it is an economic development corporation. The petitioner claims two employees and \$184,197 in gross annual income. The petitioner seeks to employ the beneficiary as a marketing and sales director for a period of three years, at a yearly salary of \$43,000.00.

The first issue to be addressed in this proceeding is whether the petitioner has established that a qualifying relationship exists between the U.S. and foreign entities.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define a "qualifying organization" and related terms 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.

* * *

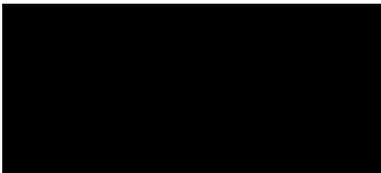
- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operation division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or 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 petitioner submitted copies of the U.S. and foreign entities' organizational charts that list the members of the Board of Directors as follows:

SIROLI INSTITUTE CANANDA



SIROLI INSTITUTE INTERNATIONAL



The director determined that the evidence of record was not sufficient to establish a qualifying relationship between the U.S. and foreign entities. The director stated that the petitioner had submitted an opinion from a legal representative regarding non-profit organizations and their relationships, but that the opinion and evaluation was not binding on Citizenship and Immigration Services (CIS). The director further addressed the issue of "control" of each entity by stating, "in determining whether two non-profit entities qualify under the regulations, a common board of directors for both entities may establish that there exists common control over two separate entities." The director stated that the ultimate control of each entity lies in its board of directors, and that in the instant matter there did not exist similar boards. The director further stated that while the Canadian board of directors may vote in a block for both entities, they could only control the Canadian entity. In contrast, the director noted that there could be a fifty-fifty vote with the U.S. entity. The director stated that as a result of the difference in the makeup of the board of directors, the evidence failed to demonstrate that the same group of directors controlled the two entities. The director concluded by acknowledging the petitioner's efforts to amend the bylaws of the U.S. entity in an attempt to establish a qualifying relationship between the two entities, but noted that the petitioner must establish that a qualifying relationship exists at the time of the filing of the petition.

On appeal, counsel asserts that the U.S. and foreign entities operate together through integrating financial resources and promoting the same program, and thus qualify as affiliates. Counsel further contends that the denial contains an acknowledgement that the petitioner's amended by-laws may create a qualifying relationship between the U.S and foreign entities, and that it is the petitioner's position that it does, in fact. Counsel also asserts that the petitioner will be submitting a new petition with the appropriate filing fees along with the instant appeal. Counsel states that the new petition will reflect the change in the company's by-laws.

Counsel's assertions are not persuasive. In the instant matter, the petitioner has failed to submit sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities. The petitioner submitted a copy of the U.S. entity's Articles of Incorporation. The Articles specifically state "[t]his corporation is not a membership corporation." Furthermore, the record does not contain evidence of the amended or new petition or the filing fees as alleged. The amended petition in question would be subject to a separate proceeding, apart from the instant petition. Each petition filing is separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). In the instant case, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. The petitioner cannot attempt to amend the company's by-laws in an effort to comport with statutory and regulatory requirements. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The legal representative for the petitioner states in a letter of support, dated August 29, 2001, that the U.S. and foreign entities are affiliated in that there is a similar composition of their board of directors; they have the same officers in both organizations; the chairman of the Board is the same in both organizations; transfers of monies are made between both organizations; the organizations have the same common goals and purpose; the organizations have the same name; and both organizations exist solely for the same product. Counsel contends on appeal that the U.S. and foreign entities operate together, through integrating financial resources and by promoting the same program. Although the petitioner's legal representative contends there exists an affiliation between the two organizations, there has been no independent documentary evidence submitted to substantiate the claims. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Likewise, the regulation and case law confirm that control is a factor 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, 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. The evidence of record is insufficient to establish that a common board of directors exists between the U.S. and foreign entities or that there exists common control over the separate entities by the boards. Furthermore, the petitioner has failed to overcome the objections of the director.

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). In the instant matter, there has been no evidence submitted to substantiate the legal representative's claim that an affiliate relationship exists between the U.S. and foreign entities.

The second issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge, and will be employed in a specialized knowledge capacity.

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.

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.

In the petition, the petitioner stated that the beneficiary has been responsible for introducing the foreign entity’s enterprise facilitation concept and coordinating training sessions with civic leaders. The petitioner further stated that the beneficiary’s proposed duties consist of promoting the enterprise facilitation model and the organization’s work to local communities, organizations, and entrepreneurs.

In a letter of support, dated July 10, 2001, the petitioner stated that the beneficiary had been employed since 1997 as the executive director for the foreign entity, and that she not only established the enterprise facilitation institute but that she also performed duties as a marketing director. The petitioner further stated that the beneficiary opened the Canadian market to the enterprise facilitation concept by introducing the concept to all levels of government, development professionals, bankers, entrepreneurs, chambers of commerce and citizens within communities. The petitioner stated that the beneficiary worked with the founder of the concept to coordinate all aspects of training. The petitioner further stated that in 1998, the beneficiary began placing sales calls, booking engagements, and finalizing contracts.

The petitioner stated that the beneficiary’s proposed duties in the United States would consist of:

Promoting the Enterprise Facilitation model and the Institute’s work to local communities, organizations and entrepreneurs, training local communities, organizations and entrepreneurs on the Institute’s methods, and attending Institute board meetings. . . . [the beneficiary] will perform marketing services for the [U.S. entity]. She will need to come to the U.S. approximately one week per month to make sales presentations, consult with prospective customers and assist with Enterprise Facilitation training sessions.

The petitioner submitted a copy of the beneficiary’s resume that reads, in part:

1997-present Executive Director, Sirolli Institute Canada Ltd.

- Together with Founder . . . established the [foreign entity] as a not-for-profit company in Edmonton, Alberta
- Opened up the Canadian market
- Handled all responsibilities related to sales, contracts, and coordinating the delivery of the [foreign entity’s] products in Canada
- Based upon successful track record in Canada, began to assist [the U.S. entity] with sales and marketing in USA

Education

1984	Bachelor of Science in Home Economics	University of Alberta
1996	Certification in Enterprise Facilitation	Sirolli Institute International Inc.

The petitioner submitted a copy of the beneficiary's Bachelor's Degree in Home Economics.

In response to the director's request for additional evidence, the petitioner stated, in part:

Since 1997, [the beneficiary] has served, continuously, as the Executive Director of the [foreign entity] and has been responsible for managing the Canadian Institute which includes directing the marketing of the organization's products to targeted clients across Canada. Since 1998, [the beneficiary] has also been responsible for directing the marketing of the [U.S. entity's] products and services as well.

....

As executive director of the [foreign entity], [the beneficiary] serves both executive and specialized knowledge functions. As executive director of our Canadian operation, she is responsible for managing, developing and promoting our organization's services in Canada, but she also develops materials that we use in all locations where we are active including Great Britain, Australia and the United States. . . [the beneficiary] has been responsible for the detailed marketing activity and materials necessary for us to develop it into a marketable model for economic development.

Since 1997, [the beneficiary] has developed a marketable product, identified prospective clients, developed product pricing strategies, marketed the product, and negotiated product sales and consulting agreements with clients

She also possesses proprietary knowledge of our customers, our contacts within provincial, county, municipal and state organizations throughout Australia, Canada and the United States. She personally directs the activities of the professionals who we use to publicize our services, design our materials, facilitate our meetings with clients, schedule our appearances and publish our educational publications.

She has played a crucial and irreparable role in developing our organization's evolving application of [the company's] model to our community-based clients.

She has contributed to both organization's [sic] current editions of our Community Operations Manual, Enterprise Facilitation Manual, and Quality Control Manual. . . . [The beneficiary] has personally managed the production of books, video tapes, lecture transcripts, bibliographies, and other training materials related to the Enterprise Facilitation model.

. . . . [The beneficiary] is involved in the day-to-day running of both organizations' marketing and sales.

[The beneficiary] identifies prospective clients and attends various seminars where she acquaints our prospective clients with our services. [The beneficiary's] detailed understanding of client's funding sources and the collaborative nature of economic development initiatives allows her to effectively negotiate contracts for the organization's services . . .

The director determined that insufficient evidence had been submitted to establish specialized knowledge. The director stated in part:

"The beneficiary's knowledge of the petitioner's product has been gained through on the job work experience."

"There is no evidence of any basic or advanced training provided to the beneficiary related to her knowledge. The evidence does not demonstrate any formal training program, dates or any training, or content of any training provided."

"The documentation does not establish that a competent individual in the field could not readily learn the duties and responsibilities of the position and successfully perform the duties."

"Marketing and organizational skills appear to be at the heart of the beneficiary's duties, which are commonly found throughout many industries, as well as within the field in which the petitioner is engaged."

On appeal, counsel disagrees with the director's decision and states that sufficient evidence has been presented to establish that the beneficiary possesses specialized knowledge and will perform her duties for the U.S. entity in a specialized knowledge capacity. The petitioner submitted an affidavit from a public official who allegedly observed the capabilities of the beneficiary. The petitioner also submitted a memorandum written by the supervisor of the Nebraska Service Center detailing his opinion of the RFE process and procedure.

Upon review, the record as presently constituted is not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that the beneficiary will be employed in a capacity involving specialized knowledge. The petitioner has failed to submit sufficient evidence and or explanation to establish that the beneficiary possesses special knowledge of the entity's product, service, research, equipment, techniques, management, or other interests and its application in international markets. Neither has the petitioner established that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes or procedures.

The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product and its application in U.S. and international markets. The beneficiary's employment experience with the foreign organization may have given her knowledge that is useful in performing her duties, but it cannot be the case that any useful skill is to be considered to constitute special or advanced knowledge. One's experience as a sales representative and marketing agent for an economic development firm cannot be considered specialized knowledge. The petitioner appears to confuse the beneficiary's knowledge of enterprise facilitation concepts with the term "specialized knowledge." The fact that the beneficiary may possess knowledge of the entity's economic development model's origins and plans for its implementation within communities in the United States and abroad, does not mean that she possess special knowledge of the

petitioner's service, product, research, equipment, techniques or management. Similarly, the beneficiary's experience with counseling entrepreneurs, and the sale and marketing of the petitioner's enterprise facilitation concept does not equate to an advanced level of knowledge or expertise in the petitioner's processes and procedures. What have been described in the evidence are responsibilities that are common to every enterprise engaged in the marketing and sale of its product and or services.

The AAO notes that the petitioner failed to overcome the objections raised by the director in relation to the specialized knowledge claim. The petitioner has failed to present evidence denoting a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis. The consultation and advisory services provided by the beneficiary, with respect to the implementation of community based economic development models, do not require special knowledge. The beneficiary's basic knowledge of the foreign entity's operations does not constitute special or advanced knowledge. Furthermore, the beneficiary's generally described job duties fail to establish that she possesses, has used, or will use in the performance of her employment, skills that qualify as requisite specialized knowledge. In the instant matter, the record reflects that the beneficiary's job duties have and will primarily consist of marketing, sales, and distribution of the petitioner's enterprise facilitation program, coordinating training sessions, booking engagements, and finalizing contracts. Performing these duties as an efficient, competent skilled worker does not connote, as counsel claims, an advanced level of expertise or special knowledge of the company's product, techniques, and management not readily available in the U.S. market.

Counsel also asserts that the beneficiary possesses an advanced level of knowledge of processes and procedures of the U.S. entity in that she was instrumental in establishing the foreign entity's enterprise facilitation institute; introducing the concept to community organizations and entrepreneurs; and contributing to the company's operational and training manuals. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There has been no evidence presented to show that a standard model program was not already in existence that was revised and used by the foreign entity in the start up of its business. There is nothing in the record that suggests the beneficiary has done anything more than market and implement a standard economic development model and enterprise facilitation concept.

Counsel argues that the beneficiary's education, training and experience have given her knowledge that is specialized because it is specific to the petitioning entity, and is not readily available in the United States. However, job training at any similarly situated firm teaches the procedures of that organization. There is no evidence of record that distinguishes the beneficiary from the other individuals working for similar firms that provide start up assistance to community based service organizations. Furthermore, the record is void of any special in-house training received by the beneficiary either from the organization or any institute of higher learning that would distinguish her skills in the economic development and enterprise facilitation field as specialized. There has been no evidence submitted that distinctly describes the level of training the beneficiary received from the petitioning company to substantiate the need for specialized knowledge in the sale and marketing of its product and or services. There is no evidence to show that the petitioner provides any unique or specialized training for its employees in the sale, distribution, and implementation of its enterprise facilitation concept and economic development model. There has been no evidence submitted to establish that the beneficiary received any form of certification, degree or diploma that would reflect her specialized knowledge capabilities in the field. The beneficiary stated in her resume that she received "Certification in Enterprise Facilitation" from the Sirolli Institute International, Inc. in 1996. However, the certificate was not made a part of the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190

(Reg. Comm. 1972). In addition, the petitioner stated in its letter of support that the beneficiary was not affiliated with the foreign company until 1997. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submits as evidence of the beneficiary's specialized knowledge an affidavit written by a public official and a memo written by a supervisor at the Nebraska Service Center. Contrary to counsel's opinion, neither the testimonials nor the supervisor's analysis is binding on the AAO. 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. at 791. In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the beneficiary possesses the skill required to work as a marketing and sales agent for the distribution and implementation of the entity's economic development models, not a special knowledge of the petitioner's processes and procedures.

In conclusion, it appears that the beneficiary's employment experience and education have given her the knowledge required to perform her duties competently. However, the petitioner has provided insufficient evidence to demonstrate that the beneficiary's duties involve or require special or advanced knowledge. The petitioner has not demonstrated that the beneficiary's method of providing consultation and advisory services to community based organizations and entrepreneurs is not a task that any sales or marketing representative without specialized knowledge of enterprise facilitation concepts or economic development models could perform as competently as the beneficiary. It is noted in the record that the entity is represented at various economic development conferences and tradeshows dealing with numerous economic development program models and enterprise facilitation concepts. The beneficiary's knowledge of economic development programs does not constitute an advanced level of knowledge of the processes and procedures of the petitioning organization. Accordingly, the petitioner has not established that the beneficiary has been or would be employed in a specialized knowledge position or that the position requires an individual with specialized knowledge capacity.

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 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 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. 117, 119 (Comm. 1981). 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 to all employees with specialized knowledge, but rather to “key personnel” and “executives.”) Accordingly, the legislative history supports a narrow application of the specialized knowledge classification.

In the instant matter, the petitioner has failed to establish that a qualifying relationship exists between the U.S. and foreign entities pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G), and therefore, the beneficiary’s capacity, even if established, would not be sufficient to qualify as an intracompany transferee.

Beyond the decision of the director, a related issue is whether the petitioner has secured sufficient physical premises to house the new office as required at 8 C.F.R. § 214.2(l)(3)(v)(A). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if Citizenship and Immigration Services (CIS) 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). In response to the director’s request for additional evidence, the petitioner submitted a copy of a residential lease agreement. The petitioner stated, “[C]onsistent with our operational management philosophy, we reduce our overhead as much as possible by avoiding entering into commercial leases.” It is noted that the petition in the instant matter was filed August 30, 2001. The date on the lease agreement is October 1, 2001. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The lease agreement, as stated, is for residential use and does not contain the name of the petitioning company or the beneficiary as legal occupants. There is no provision in the lease agreement allowing for commercial use of the leased space. The lease agreement is short-term. The lease in question does not specify the amount of space secured. The entity’s 1999 and 2000 income statements do not list any rental expense for any office in the United States. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office. For this additional reason, 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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.