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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Citizenship
and Immigration
Services

D7

[redacted]

File: EAC 03 171 52046 Office: VERMONT SERVICE CENTER Date: JUN 13 2005

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

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 Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to employ the beneficiary, a software developer, in the United States as a nonimmigrant intracompany transferee with specialized knowledge 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 is a corporation organized in the State of Connecticut that is engaged in software development. It claims that it is the parent of [redacted], located in Islamabad, Pakistan.

The director denied the petition, determining that (1) the petitioner had failed to establish that a qualifying relationship existed between the U.S. entity and a foreign entity; (2) the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment required specialized knowledge; and (3) the petitioner failed to show that it had secured adequate physical premises to house the U.S. entity as required by the regulations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel submits a brief and asserts that: (1) the petitioner had submitted ample evidence to substantiate the beneficiary's specialized knowledge and skill in the position for which the beneficiary intended to work; (2) the petitioner provided ample and sufficient evidence to show that a qualifying relationship existed between the U.S and foreign companies; and (3) the director did not adjudicate the petition properly because the request for evidence requested immaterial and irrelevant evidence. In support of these contentions, counsel for the petitioner submits a brief and additional evidence.

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)(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.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(3)(vi) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first issue in this matter is whether the petitioner and a foreign entity are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as 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.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides in pertinent part:

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

(J) *Branch* means an operating 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, or

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be

> considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims that the U.S. entity is a newly-established corporation, which was founded to develop a franchise operating software for its sister company, also located in the United States. In the petitioner's letter accompanying the petition, dated April 18, 2003, the petitioner states that the U.S. entity subsequently opened an office in Pakistan in order to prosper from the software talent available in that country. The petitioner claims that the beneficiary has been continuously employed by this Pakistani subsidiary, and now wishes to transfer the beneficiary to the United States as an intracompany transferee with specialized knowledge.

The director found the initial evidence submitted with the petition to be insufficient to establish that the petitioner maintained a legitimate relationship with a qualifying organization abroad, and consequently issued a request for evidence on May 27, 2003. In the request, the director specifically directed the petitioner to submit evidence that definitively established its qualifying relationship with the Pakistani company. On July 31, 2003, counsel for the petitioner submitted a detailed response to the director's request which was accompanied by additional documentary evidence in support of the claimed affiliation.

Upon review of the evidence submitted, the director concluded that the petitioner failed to establish that a qualifying relationship existed between the U.S. entity and a company in Pakistan. The director subsequently concluded that the petitioner's claim of affiliation with the foreign entity was invalid and, as a result, the petition was denied on August 8, 2003.

On appeal, counsel for the petitioner asserts that the documentation submitted prior to adjudication was sufficient to establish the qualifying relationship between the U.S. petitioner and the Pakistani subsidiary. Counsel further alleges that the informal organization of the Pakistani entity was thoroughly addressed and explained by the documentary evidence provided, and thus claims that the petitioner has satisfied the regulatory requirements in this area.

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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the Pakistani entity.

In this case, the petitioner suggests in its letter dated April 18, 2003 that the Pakistani entity is a subsidiary of the U.S. entity, and was created after the U.S. entity began operations in order to take advantage of the Pakistani expertise available in the field of software development. In response to the director's request for clarification with regard to the qualifying relationship in this matter, counsel contends that unlike U.S. organizations, companies in Pakistan are organized informally. Consequently, counsel provided copies of email correspondence between the U.S. entity and the beneficiary as evidence that the beneficiary was employed in Pakistan by the head office in the United States. In addition, counsel provided a copy of a lease agreement for a premises in Islamabad, dated July 2002 and signed by the U.S. entity's president, as evidence that a foreign office exists in Pakistan.

As general evidence of a petitioner's claimed qualifying relationship, documentary evidence of the ownership and control of a corporate entity is expected in order to establish that a qualifying relationship exists between the U.S. entity and a foreign entity. Stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings should be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Upon review of the record of proceeding, the AAO concurs with the director's finding that the U.S. and foreign entities do not maintain a qualifying relationship as defined by the regulations. Specifically, there is no evidence that a foreign entity even exists in Pakistan. At best, the evidence as currently constituted suggests that the beneficiary may have been retained as a contractor for the U.S. petitioner and not as an employee of a qualifying organization in Pakistan. Despite the director's specific request for documentary evidence such as stock certificates and other corporate documentation, the petitioner failed and/or refused to submit such evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As previously stated, the term "qualifying organization" is defined as 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.

(Emphasis added).

In this case, there is no evidence that the Pakistani office is a firm, corporation, or other legal entity. Despite the petitioner's claim that businesses in Pakistan may be formed informally, there is no documentation establishing that a legal entity with a relationship to the U.S. entity actually exists.[1] The petitioner has failed to provide any evidence of business conducted by this alleged entity, nor has its company registration number been provided. The ownership structure of the foreign entity has likewise been omitted from the record. As a result, there is no evidence to confirm that the beneficiary was not operating on his own as an independent contractor or a sole proprietor, as opposed to legitimately working for a subsidiary of the U.S. entity. The petitioner's 2002 I.R.S. Form 1120-A, U.S. Corporation Short Form Income Tax Return, shows that no salaries or wages were paid to any employees during that year. If, as the petitioner alleges, the beneficiary was working in the Pakistan office but being paid by the head office in the United States, it is uncertain as to why there is no evidence of wages being paid to the beneficiary during his time of employment. Although counsel and the petitioner continually allege that the beneficiary has been working for the Pakistani office of the U.S. entity, and that the U.S. entity is the parent of this entity, no documentary evidence has been submitted to corroborate these claims. Going on record without supporting documentary evidence is not

---

[1]In response to the director's request for evidence, counsel states in a letter dated July 26, 2003 that "companies in Pakistan are not organized based on an official organization method such as the customary ones in the United States, i.e., a corporation, limited liability company, etc. Rather, they are formed informally, such as the case here." There are two problems with this assertion. First, counsel's assertions are unsupported by corroborating evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel 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). Second, the Securities and Exchange Commission of Pakistan provides that a company may be formed by filing Articles of Association with any of the seven Company Registration Offices throughout the country. Additionally, and most importantly, a foreign company wishing to establish a place of business in Pakistan must submit (1) a certified copy of the charter, statute or Memorandum and Articles of the company in the English language, duly authenticated by a Pakistani diplomatic consular or consulate officer and accompanied by the prescribed form; (2) the address of the registered or principal office in the country of origin; (3) a list of the director, chief executive, and secretary, if any; (4) the particulars relating to the resident agent in Pakistan authorized to accept service on behalf of the foreign company; and (5) the address of the foreign entity's principal place of business in Pakistan. *See* Board of Investment, Government of Pakistan, *Registration/Formation of Companies, (Registration of Documents in Respect of a Foreign Company which Establishes a Place of Business in Pakistan),* http://www.pakboi.gov.pk/Overseas/registration_formation_of_co.html, (accessed February 16, 2005); *see generally* www.secp.gov.pk. No such documentation has been submitted, although such documentation is required to be filed in order for a foreign company to do business in Pakistan. Although the director specifically requested corporate documentation relating to the Pakistani enterprise, the petitioner failed to submit any such documents. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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). Furthermore, without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel 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).

Finally, there is insufficient documentation to establish that the foreign company is actively engaged in the regular, systematic, and continuous provision of goods or services as an employer in Pakistan. Therefore, it cannot be concluded that the petitioner has established that the foreign company is a qualifying organization as required by the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

Since the legitimacy of the alleged foreign entity is questionable and since there is no evidence in the record which demonstrates that the alleged foreign entity is actually conducting business, the petitioner has failed to establish that a qualifying relationship exists between the U.S. petitioner and a qualifying foreign organization. For this reason, the petition may not be approved.

The second issue in this matter is whether the beneficiary possesses 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.

In the initial petition, counsel indicated that the beneficiary had been continuously employed by the foreign company since January 1, 2002, without interruption.[2] In a letter from the president of the U.S.

---

[2]The AAO notes a discrepancy in the record with regard to the beneficiary's dates of employment. The evidence in the record indicates that the U.S. petitioner was incorporated in April of 2002, and that it established the foreign entity *after* the U.S. entity was established in order to take advantage of the software market in Pakistan. Consequently, this contention directly contradicts the statement that the beneficiary began working for the foreign entity in January of 2002 because, by the petitioner's own admission, the foreign entity did not exist at that time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

entity, dated April 18, 2003, the petitioner stated that in 2002 a company called [redacted] created the U.S. petitioner in order to design its software. The U.S. petitioner then created an office in Pakistan and contends that since July of 2002 the beneficiary was employed in that office to work on the U.S. petitioner's software development. With regard to the beneficiary's specialized knowledge and experience abroad, the petitioner stated:

> During his tenure as software designer for [redacted], [the beneficiary] has been instrumental in the development and organization of the software. He has overseen all aspects of the design and running of this software. [The beneficiary] is the person who has the most detailed knowledge of the design of this software and has designed and developed the first phase of its operation. For instance, [the beneficiary] is [the] individual who has developed the ASP / ACCESS module for EAL's online operations and he has designed software for EAL in FLASH, SQL, Visual Basic for the purposes of delivery management, credit card clearing and other applications used in the daily operations of EAL. Therefore, he is the person who is best suited to carry on the remainder of the work and to finish up and implement this project.
>
> [The beneficiary's] presence in the United States is necessary and integral to the proper integration of the developed software into the current electronic operations of EAL. [The beneficiary] has to be here in person to install, test, run and examine the newly developed software and to improve upon its performance. No one else in [the petitioning organization] has the requisite knowledge to perform these tasks. As his background demonstrates, [the beneficiary] is an exceptional software developer. But most importantly, he is the person who has designed the subject software and knows the most about it.

The beneficiary's resume, included with the petition, further indicated that he was currently a student at the Islamabad College for Boys pursuing a Bachelor of Science degree.

A request for additional evidence was issued on February 26, 2003. Specifically, the director requested evidence showing that the beneficiary's knowledge was not general knowledge possessed throughout the industry.

The petitioner submitted a lengthy response which was accompanied by numerous attachments. As the petitioner's response is part of the record, it will not be repeated in its entirety herein. The petitioner explained that the U.S. entity intends to initiate manufacturing in the United States. However, manufacturing in the U.S. did not commence as planned in 2002 primarily because of delays in the issuance of visas for three key manufacturing personnel who were to be transferred to the United States. Consequently, the petitioner states that the U.S. entity focused its ongoing activities on market expansion

---

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).

under the guidance of the beneficiary, and that the U.S. entity's market revenue has been steadily increasing.

In a letter dated July 26, 2003, counsel addressed the director's concerns over the level of specialized knowledge possessed by the beneficiary. Specifically, counsel stated:

> As previously explained in the employer's attached letter, [the beneficiary] has been involved in almost all aspects of the software development for [the petitioner] and its sister company, [redacted] As mentioned in the previous submission of the employer, and as is evident by the evidence submitted (such as e-mail transmission records that show discussions about the software design), [the beneficiary has been the key person in the development and design of the franchise software required for the operation of EAL. He has overseen all aspects of design and running of the software. By way of example, your attention is directed to the texts of the e-mails dated February 24, 2003 and December 22, [2002]. These e-mails clearly demonstrate that [the beneficiary] is the person who has been designing and implementing the software for EAL, by way of his position as the project manager for [the petitioner].
>
> For [the petitioner] and EAL to hire another individual to carry on the last phases of testing and implementation of this software in their various franchises will mean reinventing the wheel in terms of the work that is needed for this software to operate.

With regard to the director's request for specific information regarding the other L-1B employees employed by the petitioner, counsel stated that there were no other L-1B employees.

The director determined that the record did not establish that the beneficiary's knowledge was specialized or advanced and that the beneficiary's position did not require specialized knowledge. The director found that the evidence in the record indicated that the beneficiary would really be working for EAL, and not the petitioner, in order to develop their software. Further, the director concluded that the petitioner had failed to establish that the beneficiary's knowledge was valuable to the employer's competitiveness in the marketplace, that the beneficiary was qualified to contribute to the U.S. employer's knowledge of foreign operating conditions, that the beneficiary had utilized this knowledge in the employer's entity abroad, and that the knowledge could only be gained through prior experience with the employer. As the record seemed to indicate that there was no actual office overseas, the director consequently denied the petition.

Counsel submits a lengthy brief on appeal in support of the petitioner's assertions that the beneficiary possesses specialized knowledge, and asserts that the petitioner has provided ample evidence to establish eligibility for the benefits sought.

When 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(l)(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.*

In the present matter, the petitioner provided a basic description of the beneficiary's intended employment with the U.S. entity. These duties, which he would perform as a software developer, included installing, testing, running, and examining the newly developed software for the petitioner's sister company. The petitioner repeatedly states throughout the record that the beneficiary has intimate knowledge of the newly-developed software. In addition, the petitioner asserts that the beneficiary possesses specialized knowledge as a result of his work experience in the foreign company since July of 2002. Finally, counsel for the petitioner claims on appeal that the beneficiary's specialized knowledge has been clearly documented and repeats the previously submitted description of the beneficiary's duties and the manner in which they demand specialized knowledge. The petitioner, however, offers no explanation as to the work qualifications necessary for a software developer or the responsibilities of the position. Although the petitioner claims that no one else in the company possesses the beneficiary's level of specialized knowledge and that the beneficiary's knowledge is unique and uncommon since "he designed the software from the ground up," the record does not contain sufficient evidence that demonstrates that another employee of the company is incapable of performing the same or similar duties. For example, the record indicates that the beneficiary is currently a student pursuing a degree in an unspecified field. This indicates that the level of responsibility associated with the proposed position does not require a higher-level degree. Nor does the petitioner provide documentation that the beneficiary received training or work assignments focused specifically on the software. While the petitioner and counsel assert that the beneficiary possesses expertise in the field and thus is instilled with specialized knowledge, the lack of specificity pertaining to the beneficiary's work experience and training, particularly in comparison to others employed in this industry, fails to distinguish the beneficiary's knowledge as specialized. 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).[3]

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)).[4] As stated by the Commissioner

---

[3] Although counsel refers to numerous exhibits that accompany the appeal brief in support of these contentions, the documentation provided is insufficient to warrant a conclusion that the beneficiary possesses the requisite specialized knowledge required by the regulations. For example, copies of e-mail transmissions are provided in support of counsel's allegation that the beneficiary's knowledge is specialized. However, these e-mail messages do not address the level of skill and training required to perform the proposed duties, nor do the effectively establish that the beneficiary's knowledge is specialized. Therefore, there is no way to conclude, based solely on these messages, that the beneficiary's knowledge is more specialized than other software developers in the business.

[4] 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

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 classification 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 firm's operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to produce and operate a specialized product, namely computer software, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Here, the petitioner makes no claim that the beneficiary's knowledge is more advanced than other software developers in the workforce, nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other similarly qualified employees of the petitioner.[5] The lack of

---

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.

[5] Generally, while the petitioner is not required to employ other persons in a specialized knowledge capacity, information on the petitioner's other employees is important when considering the level of

evidence in the record makes it impossible to classify the beneficiary's knowledge of the newly-developed software as advanced, since no documentation is provided with regard to the software. Furthermore, it precludes a finding that the beneficiary's role is "of crucial importance" to the organization because it is impossible to compare the beneficiary's role in the organization to that of other similarly qualified employees. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). While it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

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. 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.")

Counsel also alleges that CIS is not following its own policy guidelines as to the nature of specialized knowledge. Specifically, counsel refers to the December 20, 2002 Memorandum for all Service Center

---

importance of the beneficiary in the petitioner's operations. The AAO acknowledges that the petitioner does not employ other software developers, as indicated in its response to the request for evidence.

Directors by [redacted] Associate Commissioner, on the "Interpretation of Specialized Knowledge," which adopts the "Interpretation of Specialized Knowledge" memorandum [redacted] dated March 9, 1994. Citing this memorandum, counsel asserts that "specialized knowledge is 'specialized knowledge of the company product and its application in international markets . . . or an advanced level of knowledge of the processes and procedures of the company.'" Counsel then restates the previously submitted description of the beneficiary's duties and the knowledge they require, and asserts that the beneficiary has consequently satisfied the definition of specialized knowledge. Furthermore, counsel asserts that the director's conclusions in the denial were not supported.

While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. The AAO notes that, with regard to counsel's reliance on the 2002 Associate Commissioner's memorandum, the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process 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.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company product and its application in international markets is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the assertion that the beneficiary's knowledge has allowed him to competently perform his job in the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel," nor does it establish employment in a specialized knowledge capacity.

Moreover, the record fails to establish that the proposed U.S. position requires specialized knowledge. Counsel contends that the beneficiary's knowledge is essential for the petitioner to remain competitive in the U.S. market. While the position of software developer for the U.S. entity may require a comprehensive knowledge of the petitioner's software and its implementation, there is no documentation, other than counsel's assertion, that the beneficiary must possess advanced, "specialized knowledge" as defined in the regulations and the Act. Again, the assertions of counsel do not constitute evidence. *Matter of Obaigbena, supra*; *Matter of Ramirez-Sanchez, supra.*

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* 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 appeal will be dismissed.

The final issue before the AAO is whether the U.S. secured adequate physical premises to house the U.S. entity as required by the regulations. The director requested specific documentation pertaining to this issue in the request for evidence. Specifically, the director requested photographs of the petitioner's office in addition to evidence that physical premises had been secured. In response, counsel for the petitioner submitted some basic photos of the petitioner's alleged business location, which failed to display the name of the business on the exterior, and omitted a lease agreement establishing the business address of the petitioner. Consequently, the director concluded that the petitioner had failed to establish that it had established a place of business in the United States and subsequently denied the petition.

On appeal, counsel for the petitioner alleges that the director never asked for a copy of the petitioner's lease agreement in the request for evidence, and additionally contends that it is erroneous for the director to request details about the building details for the petitioner's workplace. Consequently, the petitioner alleges that the denial on this basis "is simply another error in a line of errors that we have seen in this case."

The AAO disagrees. The regulation at 8 C.F.R. § 214.2(l)(3)(vi)(A) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that sufficient physical premises to house the new office have been secured. In the initial petition, the petitioner indicates that the U.S. petitioner is a newly established corporation. Consequently, the beneficiary would be coming to the United States to work in a new office, as provided for under 8 C.F.R. § 214.2(l)(3)(vi), despite the petitioner's indication on the form I-129 that it was not a new office petition. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In the request for evidence, the director requested on page two that the petitioner submit evidence that "establishes you have secured sufficient physical premises to house the new office." Generally, in commercial business dealings, lease agreements, as opposed to contracts of sale, are submitted as evidence of the petitioner's acquisition of a business location. Consequently, the director's denial based on the fact that the petitioner did not submit a lease agreement is reasonable, since the petitioner failed to submit any documentation establishing that it had secured physical premises to house the newly formed corporation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Finally, the petitioner's tax returns display the same address as its sister company, EAL. As a result, it is questionable whether the U.S. petitioner actually has an independent office. It appears from the record that the alleged software development company is an in-house office working within EAL. Consequently, the AAO concurs with the director's finding that the petitioner did not establish that adequate physical premises had been secured to house the new office. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the AAO notes additional issues not raised prior to adjudication. First, the petitioner has failed to show that the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States as required under 8 C.F.R. § 214.2(l)(1)(3)(vi)(C). According to the petitioner's 2002 tax return, it paid no salaries or wages to any employees. Additionally, the bank statements submitted in the record are for its sister company, EAL, and therefore do not establish the financial ability of the petitioner to remunerate the beneficiary. For this additional reason, the petition may not be approved.

Secondly, the petitioner has failed to establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition as required under 8 C.F.R. 214.2(l)(1)(3)(iii). The record indicates that the beneficiary began working for the foreign entity in July of 2002. Since the petition was filed on May 19, 2003, the beneficiary does not have one complete year of continuous full-time employment with the foreign entity at the time of filing. Although the record indicates in several places, contrary to the above claim, that the beneficiary's employment with the foreign entity commenced in January 2002, this evidence does not appear credible. The petitioner repeatedly states that the foreign entity was formed as a subsidiary of the U.S. entity. The petitioner states that the U.S. entity, after its formation, elected to open an office in Pakistan to reap the benefits of the software industry located therein. Since the U.S. entity was not formed until April of 2002, it stands to reason that the foreign entity was not opened until after this date. Consequently, the legitimacy of the petitioner's claim that the beneficiary began working abroad for the foreign entity in January of 2002 is doubtful. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Finally, the record is devoid of evidence proving that the beneficiary's employment abroad was in a position that was managerial, executive, or involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(1)(3)(iv). The minimal evidence provided with regard to the beneficiary's functions while employed abroad make it impossible to conclude that the beneficiary was employed in a qualifying capacity. The assertions of counsel and the petitioner are unsupported by independent evidence; consequently, these assertions are not persuasive. As previously indicated, 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. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter Of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. For this additional reason, the appeal will be dismissed.

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. 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.