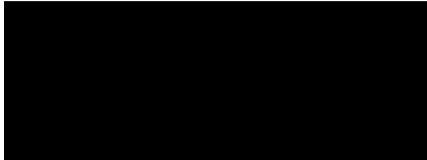


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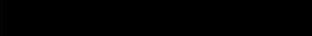
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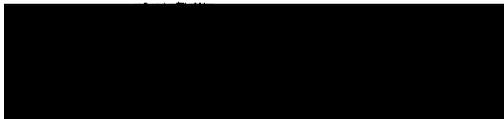
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FILE: LIN 02 261 51935 Office: NEBRASKA SERVICE CENTER Date: **JUN 13 2015**

IN RE: Petitioner: 
Beneficiary: 

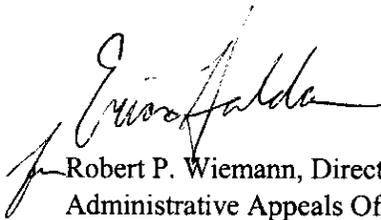
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Nebraska 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 is engaged in the sales and services of induction heating equipment. It seeks to temporarily employ the beneficiary as a technician in the United States. The petitioner filed a petition to classify the beneficiary 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. section 1101(a)(15)(L).

The director denied the petition and determined that the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment required specialized knowledge.

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, the petitioner's counsel submits a memorandum and asserts: (1) that the petitioner demonstrated that the classroom training and on the job training received by the beneficiary have resulted in his possessing the required specialized knowledge; and, (2) that the director misinterpreted the staffing of the U.S. business. Counsel submits a brief and additional evidence in support of the appeal.

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.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) 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 August 14, 2002, the petitioner filed the Form I-129. On the Form I-129, the petitioner described the beneficiary’s proposed U.S. duties as:

Responsible for installation and 24-hour per day on-call status for after-sale service of specialized and proprietary induction equipment, including tube welders and automotive industry bonding equipment and manufactured by affiliates outside the United States. Perform customer training as required, and train U.S. employees on proprietary equipment issues.

In addition, in an August 13, 2002 letter, counsel for the petitioner further described the beneficiary’s duties as a technician:

[The beneficiary’s] services are needed on an emergency basis because there has been an unanticipated departure of a key individual from the Company, leaving a significant void which must be filled immediately. [The beneficiary] and the beneficiary of a concurrent position, . . . will be requested to split time between their duties in the United Kingdom and duties in the United States. They will function to provide after-sales service on the products as well as to train replacements to perform those services on these unique and proprietary company products which are manufactured in Europe and shipped to customers in the United States.

Counsel stated that the beneficiary had been serving the petitioner's United Kingdom affiliate since September 2000, where he performed after-sales service and repair duties for "the full range of the company products." Counsel stated that the beneficiary also worked as a test engineer responsible for testing transistorized frequency converters. Counsel claimed the beneficiary "has specialized knowledge of the company products, which meets the definition of specialized knowledge."

In a request for additional evidence dated August 23, 2002, the director requested that the petitioner provide the following: (1) evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished, and not generally known by practitioners in the field; (2) evidence that the beneficiary's knowledge of the company's processes and procedures is apart from the basic knowledge possessed by others; (3) evidence that the duties in the United States require a person with specialized knowledge; (4) evidence that the beneficiary possesses special knowledge of its 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; (5) an explanation of how the U.S. employees are not sufficiently familiar with the equipment or product of the organization to an extent that the beneficiary is needed to provide them training; (6) an explanation of the training that the beneficiary will provide including the objectives, the number of training hours, whether the training is on the job or in a classroom, and the duration of the training; and (7) evidence of training that the beneficiary has received with the foreign entity relative to the position, including the dates and duration of training.

In response to the request for additional evidence, in an August 26, 2002 letter, the petitioner explained that "the offered position requires specialized knowledge because the Company produces the proprietary equipment and machinery outside the United States and delivers them for installation and maintenance in the United States to U.S. customers." In addition, the petitioner described the specific knowledge required for this position:

[T]he person must have the ability to diagnosis [sic] and repair complex electronics of a unique and proprietary high-speed tube welder built only by the [petitioner's] Group, as well as knowledge of tube welding processes employed by the equipment. This equipment is not built in the United States, so the specialized knowledge of the equipment and its processes does not exist within the United States. The Company must bring in individuals familiar with that equipment to perform its contractual responsibilities as well as to attempt to impart this information to its U.S. employees.

* * *

[The beneficiary] has a high level of specialized experience in performing these kinds of service functions on this kind of equipment, which he has been performing since he joined the Company in 2000 and became trained with and familiar with these and other Company products.

* * *

[T]he company previously had two individuals who are responsible for providing this kind of service. One individual, the individual who had received the training and had experience in servicing the specific equipment . . . left the company suddenly. The other individual, who is still with the Company, has less than a year with the Company and has not had the specific training on these complex forms of equipment.

In addition, the petitioner stated that the beneficiary will provide classroom training on the specific characteristics of the equipment 20 percent of his time and on the job training 80 percent of his time. The petitioner also explained that the beneficiary received his training from classroom work, "principally with technical manuals and instruction regarding general tendencies of the equipment and machinery." The beneficiary also accompanied another employee on installation and service calls where the beneficiary observed and performed the service to learn the special characteristics of the equipment.

On September 6, 2002, 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. The director noted that "the petitioner's documentation does not demonstrate that the classroom training or the on the job training involved advanced levels of knowledge of the involvement of knowledge, which can be considered specialized." The director found that (1) the individual to be trained by the beneficiary has been employed for less than a year but worked in a capacity of a technician, and has provided installation and after-sales maintenance and repair service; (2) the evidence submitted did not establish how much training the beneficiary received to successfully perform his duties or how much training is required to be able to perform the duties; (3) there was no clear distinction between the position requiring specialized knowledge as opposed to being a position for a skilled worker. Finally, the director concluded, "the knowledge, which this individual has and is to be taught, has not been demonstrated to not be easily transferable to other competent individuals within the field."

On appeal, counsel submits a memorandum in support of the petitioner's assertions that the beneficiary possesses specialized knowledge, and that the intended employment requires specialized knowledge. Specifically, counsel asserts:

- The petitioner demonstrated that the classroom training and on the job training received by the beneficiary have resulted in his possessing the required specialized knowledge. The beneficiary has been involved in installing and servicing this equipment in England, and indeed across Europe, since shortly after he joined the Company and trained on this equipment by a senior company employee.
- The position to be performed by the beneficiary requires the application of specialized knowledge because the Company produces unique and proprietary equipment and machinery. This equipment is not built in the

United States, so the specialized knowledge concerning the equipment and its processes does not exist in the United States.

The beneficiary must have the ability to diagnose and repair complex electronics of the unique and proprietary high-speed tube welder exclusively by [the company], as well as the specialized automotive adhesive curing induction bearing equipment and system, as well as knowledge of the processes employed by the equipment.

Counsel also asserts, on appeal, that the director's denial of the petition was based on an incorrect interpretation of the petitioner's staffing. Counsel explains that the one technician who is still with the company, has not yet had specific training on these complex forms of equipment, and thus was assigned to provide service on other products of the company. Counsel contends that "despite this clear delineation," the director stated that it was not clear how the trainee performed duties for the company without the knowledge necessary to perform his duties. In addition, counsel states that the beneficiary is "needed for the position to temporarily fill the spot of the previously trained and now departed employee, and to serve as trainer of the remaining employee so that he will be able to do the job."

Additionally, in a September 24, 2002 letter signed by the president of the company, some of the beneficiary's duties are reiterated. The letter states, "The beneficiary is needed to temporarily fill the spot previously filled by the now departed employee . . . who had specialized knowledge . . . leaving behind an individual who has been with [the company] less than a year and who has not been trained on this equipment." The letter also states, "Because the equipment is only produced outside of the United States, and is proprietary in nature, knowledge about the equipment and process does not exist in the United States. Therefore, the company must initially transfer employees from overseas who are familiar with the equipment as well as the service and repair issues surrounding it in order to service current customers and to train U.S. employees to perform future service." Finally, the letter states that the supplementary documentation regarding the welding and adhesive curing process is submitted "to identify and generally explain the unique and proprietary characteristics of the company's equipment." The petitioner submits a product brochure, two technical articles, and a brochure describing the company's induction adhesive curing and heat staking applications in support of the appeal.

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 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(1)(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 has provided a vague description of the beneficiary's intended employment in the U.S. entity, and his responsibilities as a technician. For example, the beneficiary's proposed U.S. duties are described as being "responsible for installation," "will function to provide after-sales service on the products," and "train replacements to perform those services." The petitioner further described the beneficiary as an employee who "will provide classroom training on the specific characteristics of the equipment 20 percent of his time and on the job training 80 percent of his time." Based on this

vague description, it is unclear exactly what responsibilities for installation the beneficiary will have to distinguish him as an employee with specialized knowledge or how the beneficiary will function to provide after-sales services and training in a specialized knowledge capacity. 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)).

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 repeatedly states throughout the record that the beneficiary has "a high level of specialized experience in performing these kinds of service functions on this kind of equipment," and that this equipment is "unique" and "proprietary." Counsel also claims on appeal that "the [p]etitioner, in fact, demonstrated that the classroom training and on the job training received by the beneficiary have resulted in his possessing the required specialized knowledge." The petitioner, however, offers no explanation as to the educational or work qualifications necessary for a technician. Nor does the petitioner provide documentation that the beneficiary actually received specialized training or work assignments. While the petitioner and counsel assert that the beneficiary has a "high level of specialized experience," and works on "unique" equipment, the lack of specificity pertaining to the beneficiary's work experience and training, particularly in comparison to others employed by the petitioner and 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. 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).

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)).¹ 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

¹ 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.

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.

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 v. Attorney General.*, “[s]implify put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F. Supp. 9, 15 (D.D.C. 1990). 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 company. If an employee did not contribute to the overall economic success of the company, 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 did not explain how the beneficiary’s knowledge is more advanced than the other technicians employed by the foreign company. In an August 26, 2002 letter responding to the director’s request for additional evidence, the petitioner explained how the beneficiary “accompanied another employee on installation and service calls where the beneficiary observed and performed the service to learn the special characteristics of the equipment.” However, this does not explain how the beneficiary has gained more advanced knowledge than other technicians who could easily be trained under the supervision of another employee. This knowledge appears to be easily transferred to other competent individuals within the field. Again, the petitioner has not provided any information pertaining to the other technicians employed by the foreign company. Nor did the petitioner distinguish the beneficiary’s knowledge, work experience, or training from the other employees. Although specifically requested by the director in the request for evidence, the petitioner did not provide evidence of the training the beneficiary has received with the foreign entity, information regarding the training program and its objectives, or the specific dates and duration of the beneficiary’s classroom and on-the-job training. 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 lack of evidence in the record makes it impossible to classify the beneficiary’s knowledge of the induction

heating equipment as special or advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the company. Again, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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 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.")

The petitioner also asserted that the beneficiary's knowledge is specialized because "the Company produces proprietary equipment and machinery, about which he must be knowledgeable." While the beneficiary's knowledge of the equipment and machinery may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Additionally, the petitioner claims, "Because the equipment is only produced outside of the United States, and is proprietary in nature, knowledge about the equipment and process does not exist in the United States. Therefore, the company must initially transfer employees from overseas who are familiar with the equipment as well as the service and repair issues surrounding it in order to service current customers and to train U.S. employees to perform future service."

While the beneficiary's knowledgeable contribution to the corporation 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). Although the beneficiary performs highly technical duties, 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 in the field of induction heating equipment is more advanced than the knowledge possessed by others employed by the petitioner's group or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. 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.

Further, the record does not establish that the proposed U.S. position requires specialized knowledge. In response to the director's request for additional evidence, the petitioner stated, "This equipment is not built in the United States, so the specialized knowledge of the equipment and its processes does not exist within the United States." The petitioner further explained that "the offered position requires specialized knowledge because the Company produces the proprietary equipment and machinery outside the United States and delivers them for installation and maintenance in the United States to U.S. customers." While the position of a technician may require a comprehensive knowledge of the sale and services of heat induction equipment produced outside the United States, there is no documentation, other than counsel's and the petitioner's assertions, that a technician must possess advanced, "specialized knowledge" as defined in the regulations and the Act. Again, 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).

Finally, counsel contends that the director misunderstood the staffing of the U.S. company, and made incorrect assumptions about the job duties of one of the remaining employees. The AAO acknowledges that in his decision, the director stated, "the individual to be trained by the beneficiary has been employed for less than a year but worked in a capacity of a technician, and has provided installation and after sales maintenance and repair service." While counsel contends that the director's interpretation of the facts resulted in a misunderstanding of the company's staffing, the decision contains sufficient evidence that the director properly reviewed the record. Of particular importance is the director's findings based upon the beneficiary's proposed job duties, including focusing on how the evidence submitted did not establish how much training the beneficiary had received in order to successfully perform his duties or how much training is required to be able to perform the duties, and how there was no clear distinction between the position requiring specialized knowledge as opposed to being a position for a skilled worker. Therefore, although the director may have misunderstood the duties of the remaining individual of the petitioning company, the director properly considered the relevant facts in his denial of the petition. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes

informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The director satisfied this burden.

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.

Beyond the decision of 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 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44). On review, the petitioner fails to articulate how the beneficiary possesses specialized knowledge and how the overseas 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: “Test engineer of the EFD range of transistorized frequency converters; service engineer for EFD product range.” However, based upon this vague description and further documentation in the record describing the beneficiary’s duties abroad, the AAO is unable to evaluate whether the beneficiary has been employed in a specialized knowledge capacity at the foreign company. 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.