

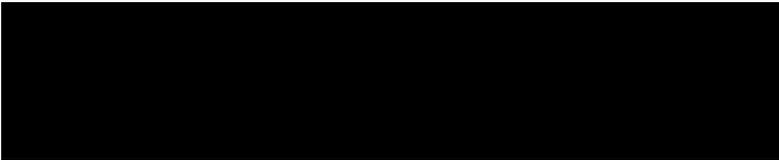
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7



File: WAC 03 257 53419 Office: CALIFORNIA SERVICE CENTER Date: **NOV 08 2005**

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)

IN 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, California 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee in a capacity involving 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 California that is engaged in the import, sales and marketing of Philippines-made house wares and accessories. The petitioner claims that it is the affiliate of Brakah International, located in Makati City, Philippines. The petitioner seeks to employ the beneficiary as its senior merchandiser for a two-year period at its new office in the United States.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will serve in a capacity involving 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, counsel for the petitioner disputes the director's decision and asserts that the director did not consider all of the evidence submitted in support of the beneficiary's claimed specialized knowledge qualifications. In support of these assertions, counsel submits a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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) 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.

The regulation at 8 C.F.R. § 214.2(l)(3)(vi) states that if 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 primary issue in the present matter is whether the beneficiary will be employed in a capacity that involves specialized knowledge.

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

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) states:

Specialized Knowledge means special 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 a September 3, 2003 letter submitted with the initial petition, the petitioner described the beneficiary's proposed duties and specialized knowledge requirements of the United States position as follows:

She will assist in sales and marketing for the company as well as maintaining the client and vendor relations of the company. Moreover, she will handle the design and product development for [the petitioner] as well as conduct follow up requests for orders placed overseas with the company's international contractors and vendors. Specific duties will include planning the negotiation of contracts for sale with huge multinational companies and establishments and explaining to customers the various differences and qualities of each

product sold by [the petitioner] and as to how the materials and qualities are able to achieve the desired look and effect the customers want.

Moreover, [the beneficiary's] job duties include educating [the petitioner's] customers regarding the nature of the indigenous products it sells. [The petitioner] will be showcasing indigenous materials from the Philippines such as *abaca*. Havana hemp, *tuskig*, *raffia*, *capiz*, coco twigs and shells, *carugumoy*, *tinlak*, pineapple fiber and other products that comprise houseware and decorative articles not available in the United States. The indigenous nature and quality of those products necessitate the use of a technical expert who can readily explain to customers or give suggestions to clients on the proper usage of the materials desired.

[The beneficiary's] expertise in abaca will be critical to the company and to how it would be able to explain in detail the nature of the indigenous fiber to customers who do not know anything about it. The nature of the fiber is important for design purposes, tensile strength, flame retardancy, health-related issues, and other government compliance issues. [The beneficiary's] intimate knowledge of the fiber is integral to the resolution of these issues.

The knowledge [the beneficiary] possess [sic] regarding the nature and quality of the various products sold by [the petitioner] cannot readily be found in an employee in the United States. The products . . . are only found in the Philippines and more importantly, knowledge and familiarity with the products are not even found with every Filipino worker. The specific workers must have been worked around or has been involved in a very intimate way with the harvesting and production of the indigenous fibers and materials that are sold by [the petitioner]. [The beneficiary] has been involved in very intimate ways with the production and preparation of indigenous products found in the showroom of [the petitioner] as well as worked around them since 1992.

The petitioner further stated that the beneficiary had been employed in a very similar capacity as a senior merchandiser and designer with the foreign entity since 1992 where she was responsible for design and product development tasks, follow-up of sample requests, pre-shipment inspection requirements, and explaining to customers the quality and nature of products sold by the company. The petitioner further stated that the beneficiary responded to inquiries regarding the tensile strength and durability of the abaca products, and was "intimately involved in the design concepts and production process with the customers." In addition, the petitioner claimed that beneficiary "collaborated on numerous design concepts and production processes with foreign interior designers, company executives, managers and business owners." The petitioner also emphasized the beneficiary's knowledge of U.S., Asian and European customs and shipping regulations, her bi-lingual abilities, and her knowledge of the import-export market, sources and suppliers. Finally, the petitioner stated that "the key element of these duties is the technical knowledge of the indigenous products sold by [the petitioner], knowledge gained only after a number of years of employment with a company who specializes in these products."

On November 26, 2003, the director requested additional evidence to establish that the beneficiary has specialized knowledge. Specifically, the director requested: (1) the petitioner's organizational chart showing

the location of the proposed position and number of employees the beneficiary will supervise; (2) California Employment Development Department Forms DE-6, Quarterly Wage Report, for all employees for the last two quarters; (3) information regarding the petitioner's foreign national employees, including their job titles and visa status; (4) information regarding the number of persons holding the same or similar positions at the petitioner's location; (5) an explanation as to how the duties the alien performed abroad and those she will perform in the United States are different or unique from those of other workers employed by the petitioner or other U.S. employers in this type of position; (6) an explanation as to how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in this field; and (7) an explanation as to how the petitioner's business would be impacted if the petitioner is unable to obtain the beneficiary's services, and what alternative action will be taken to fill the responsibilities.

In response, counsel for the petitioner submitted a letter dated December 2, 2003 in which he explained that some of the requested evidence could not be provided because the petitioner is a new company that does not currently have any existing payroll employees. The petitioner did, however, submit a proposed organizational chart indicating that the petitioner's organization will include an owner/manager, the beneficiary as senior merchandiser, a marketing department and an import/export department. In response to the director's request that the petitioner explain how the beneficiary's knowledge is "specialized" or "advanced" the petitioner repeated the job description described above. Counsel added that, since the products sold and marketed by the petitioner are only available in the Philippines, "the beneficiary has knowledge of a process and various products of a sophisticated nature." Counsel further explained:

[O]nly persons with vast experience abroad with the products and its origins possess the knowledge and expertise to properly market, explain, educate, manage, and implement design concepts associated with the employer's products. The beneficiary possesses knowledge that is valuable and critical to the employer's competitiveness and survival in the market place. Furthermore, the beneficiary possess [sic] knowledge which can only be gained through prior experience with the petitioning employer because the producers of the products that the employer markets only carry contracts with the petitioning employer and the knowledge that the beneficiary has gained thru [sic] the years she has been employed with the petitioner abroad was only garnered by working specifically with those manufacturers.

In response to the director's request for a description of the beneficiary's training and how it is different or unique, counsel stated that she has been employed by the foreign entity since 1992 where "she gained her technical and specialized knowledge about the unique nature and qualities of abaca fiber and the other indigenous products sold by [the foreign entity] and now [the petitioner]. Counsel also re-emphasized the beneficiary's knowledge of customs and shipping regulations, the import-export market, suppliers, and her ability to speak both English and Tagalog. Counsel further asserted "[the beneficiary's] job duties in the Philippines placed her intimately with the manufacturing process of the items being sold by the employer and her close contact and immersion into the production of abaca gave her a profound understanding and knowledge of the product that enables her to perform the proffered job duties in the U.S." Finally, Counsel stated that the beneficiary's services are "critical to the survival of the petitioner's business in the U.S. Without the presence of [the beneficiary], the company will be unable to provide a basic service to its

customers which is education and project management.” Counsel also stated that it would be “close to impossible” to train a U.S. worker to fill the position, and that “a person can only be properly trained and educated to fill the position offered to [the beneficiary] after five years of immersion in the provinces of the Philippines and the abaca industry where the person will be educated in the origins, creation, preparation and manufacturing of the abaca fiber.”

On February 24, 2004, the director denied the petition determining that the petitioner had not established that the beneficiary would serve in a capacity involving specialized knowledge. The director specifically noted that the beneficiary’s knowledge is general knowledge or expertise which enables her to provide a service. The director further noted that the petitioner did not establish that the beneficiary has an advanced level of knowledge of the processes and procedures of the petitioning organization. Finally, the director noted that the ability to speak two languages and “unsubstantiated knowledge of laws and customs regulations are not indicative of an uncommon or specialized knowledge.”

On appeal, counsel for the petitioner asserts that the director failed to consider the information provided in response to the request for evidence and suggests that such failure is an abuse of discretion. Counsel further contends that it has provided sufficient explanation regarding the beneficiary’s duties, their “specialized and unique nature” and the “uniqueness of the products it sells.” Counsel contends that the beneficiary has “intimate knowledge” of the “complicated and unique nature of materials involved in the production of the petitioner’s products” including knowledge of the fibers used as raw materials by the petitioner and its contractors in the Philippines. In support of these assertions, the petitioner submits a listing of products purportedly describing some of the goods sold by the petitioner, and a study describing the abaca agricultural industry in the Philippines. Counsel contends that the beneficiary’s knowledge of the abilities and limitations of the abaca suppliers and her existing relationships with them make her an “essential employee.”

On review, counsel has not demonstrated that the beneficiary possesses “specialized knowledge” as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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. *See 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.

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,

49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

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

Id. at 53.

In the instant matter, the petitioner has not provided a detailed description of the daily job duties to be performed by the beneficiary that would amount to her employment in a specialized knowledge capacity or employment beyond that of a skilled worker. Other than submitting a brief statement that the beneficiary would use her “intimate knowledge” of the products sold by the petitioner’s organization to market abaca products and other products from the Philippines in the United States, the petitioner has not identified any aspect of the beneficiary’s position that involves special knowledge of the petitioning organization’s product, service, research, equipment, techniques, management, or other interests. Furthermore, while the petitioner repeatedly refers to the “petitioner’s” products and the beneficiary’s experience in the “design and production process” it is clear from the record that neither the petitioner nor the foreign entity are involved in design, manufacture or production of any products. The foreign entity is described as a “buying office” and both entities were formed to represent foreign buyers interested in buying products from manufacturers in the Philippines and in other Asian countries. Counsel’s additional statement that the beneficiary’s prior work experience with the foreign company and familiarity with existing suppliers makes her an “essential employee” is also insufficient. The limited descriptions provided do not specifically identify the beneficiary’s job duties, nor do they demonstrate advanced knowledge or skills possessed by the beneficiary. The petitioner is obligated to clearly define the beneficiary’s unusual duties, skills, or knowledge. There is nothing in the record to suggest that the beneficiary’s duties are different or uncommon compared to similarly employed workers in the industry. 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)).

The petitioner’s claims that the beneficiary has an “intimate knowledge” of the raw materials used by the petitioner’s suppliers does not establish that the beneficiary would be employed in a position involving specialized knowledge. As noted above, the beneficiary will be employed as a merchandiser responsible for marketing products manufactured by overseas suppliers. The beneficiary will not be involved in the design or manufacturing process, and is not involved in sourcing raw materials for the manufacturing of products. The

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.

beneficiary's knowledge of the characteristics of abaca fibers and other indigenous material from the Philippines will likely contribute to both her success in the proposed position and the petitioner's overall profitability. The beneficiary's knowledge in these particular areas, however, does not appear to exceed that of a skilled worker. Although requested by the director, counsel has not provided any evidence that the beneficiary completed any special training in the materials used in the products sold by the petitioner's organization. The petitioner merely states that she gained her "technical and specialized knowledge about the unique nature and qualities of abaca fiber" because she has worked for the foreign entity since 1992. The record establishes that the beneficiary was hired by the foreign entity in the position of "senior merchandiser and designer" in 1992, and since that time, she has been performing essentially the same duties that she will perform in the United States. There is no evidence in the record describing the beneficiary's prior work experience. The fact that the foreign entity hired the beneficiary as a "senior merchandiser" and expected her to perform the described duties without prior training or experience in the field raises questions regarding the petitioner's claim that it would take five years to hire a United States worker to perform the same job duties.

Additionally, the petitioner has not submitted documentation explaining how the knowledge and expertise required for the beneficiary's position would differentiate her knowledge from others employed in a similar position by the petitioner's organization or other employers in the industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. 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* at 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 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, counsel has indicated that the beneficiary possesses specialized knowledge as a result of her work experience with the foreign company and her knowledge of both the foreign entity's suppliers and the products sold by the petitioner and the foreign entity. The petitioner has not indicated that the beneficiary received any special training which would give her knowledge that is more specialized or advanced than that of the petitioner's other employees. Nor has the petitioner established that she performed any duties which could be considered "special" or "advanced." Although requested by the director, the petitioner did not describe how her duties are different or unique from those of other workers employed by the foreign entity. Further, the AAO notes that the petitioner's business plan includes a job description for the petitioner's owner/manager which is essentially identical to that provided for the beneficiary. Therefore, the AAO must conclude that, while it may be correct to say that the beneficiary is an experienced or educated employee in

the petitioner's products and business, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Similarly, the petitioner has not submitted documentation explaining how the knowledge and expertise required for the beneficiary's position would differentiate her knowledge from others employed in a similar position by other employers in the industry. Counsel repeatedly emphasizes that the beneficiary will educate the petitioner's customers about the "indigenous" products it sells and states that these products are not available in the United States, thereby suggesting that its U.S. clientele are likely unfamiliar with the products and therefore require the beneficiary's claimed expertise. Although counsel concedes that the beneficiary's knowledge of processes and products is not unique to the foreign company, counsel claims that there are no other companies selling such products in the continental United States. Many of these statements are contradicted by the information contained within the petitioner's business plan, which was submitted with the initial petition. The business plan indicates that most of the foreign entity's and petitioner's existing customers are major U.S.-based retailers, who are assumed to be familiar with the products the petitioner will be importing for them. The business plan indicates that the existing buyers will be the company's primary focus. The business plan states that the petitioner believes that it is the first company to open a showroom in the United States specializing in Philippines-made products, but there is nothing in the record to indicate that such products are not available in the United States from overseas suppliers. In fact, the petitioner indicates in its business plan that there are "thousands" of United States-based importers of Asian-made products in the gifts, house wares and decorative accessories market. Although the petitioner states that it will focus on products made of "natural materials" and focus on the "middle to high end" market, the petitioner has not substantiated its claim that the types of products it sells are uncommon in the U.S. market, and that the beneficiary's knowledge can thus be differentiated from other similarly employed workers in the industry. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Finally, the AAO notes that the petitioner's business plan indicates that it intends to establish sales agents agreements with "several qualified free-lance independent merchandisers or buyers with experience in this line of business." This statement further suggests that anyone with some experience in buying and importing similar products would be qualified to work for the petitioner, and contradicts counsel's statement that it would need to provide five years of training in the Philippines in order to prepare an individual to work as a senior merchandiser. Counsel nevertheless claims that only an employee who had years of experience with the foreign entity would be qualified for the position because the producers of the products have exclusive contracts with the petitioner's organization. Counsel did not provide any documentary evidence to support its claim regarding exclusive contracts, nor did it explain how the indigenous products sold by its suppliers are different from those sold by other suppliers. 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).

On appeal counsel asserts that the director abused his discretion by not specifically addressing in his decision the information provided by the petitioner in response to the director's request for evidence. This assertion is not persuasive. Upon review, the petitioner's response to the request for evidence included no supporting

documentation, and made essentially the same unsubstantiated claims contained in the statement accompanying the initial petition. In fact, much of the response was copied verbatim from the petitioner's original supporting letter. Counsel's assertion that the director did not consider all the evidence is unfounded.

As previously cited by the director, in *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." In the instant case the petitioner has successfully demonstrated that the beneficiary is knowledgeable in buying and importing of decorative products from the Philippines. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in her field. Contrary to counsel's arguments, mere familiarity, or even years of experience, with an organization's product or service, does not constitute specialized knowledge as defined by section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that she would be employed primarily in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted sufficient supporting documentation to establish that it has a qualifying relationship with the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner indicated on Form I-129 that the companies are affiliates based on common ownership and control by LaLaine V. Abonal. The record establishes that this individual is the sole proprietor of the foreign entity. The petitioner submitted its articles of incorporation, which state that the corporation is authorized to issue 2,000 shares of stock. The petitioner did not submit any evidence to establish that this stock was issued to the claimed sole owner, and in fact submitted no other documentary evidence to establish who owns and controls the U.S. entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. For this additional reason, the appeal will be dismissed.

Another issue not addressed by the director is whether the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States as required by 8 C.F.R. § 214.2(l)(3)(vi). As the appeal will be dismissed, this issue need not be examined further.

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.