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U.S. Citizenship
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Services

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File: EAC 04 088 52895 Office: VERMONT SERVICE CENTER

Date: SEP 30 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, 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 as an intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L).¹ The United States petitioner, a corporation organized in the State of New Jersey, is a comprehensive software consulting company and claims to be the subsidiary of [REDACTED], located in Mumbai, India.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary possessed specialized knowledge; and (2) the beneficiary did not have the required one year of experience with the foreign entity abroad prior to the filing of the petition.

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 asserts that of the two reasons for the denial, the first is erroneous and contrary to current law, and the second has been overcome by evidence accompanying the appeal. In support of this assertion, counsel submits a brief statement on the Form I-290B 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.

¹ It should be noted for the record that, according to 8 C.F.R. § 214.2(l)(5)(i), the U.S. Department of State has jurisdiction over individual petitions seeking L classification under a blanket petition for non-visa-exempt beneficiaries outside the United States. Therefore, under the procedures provided for under 8 C.F.R. § 214.2(l)(5)(ii), the petitioner incorrectly filed this petition with the U.S. Citizenship and Immigration Services (CIS). Consequently, the director should have rejected the petition and instructed the petitioner to provide the required documentation to the beneficiary to apply for a visa with a consular officer abroad. As the petition was accepted by the director for processing, however, the AAO will proceed to issue a decision in this matter.

- (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.

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.

The first issue in this matter is whether the beneficiary possesses the required one year of employment abroad with a qualifying entity.

The regulation at 8 C.F.R. § 214.2(l)(3)(iii) states that an individual petition filed on Form I-129 shall be accompanied by 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.

The petition in this matter was filed on February 6, 2004. The director, relying on the regulation above, accordingly determined that the beneficiary should have had at least one year of continuous employment abroad during the period from February 6, 2001 to February 6, 2004. Since the record indicates that the beneficiary began working for the foreign entity in May 2003, the director denied the petition concluding that the required one year of continuous employment abroad had not been met.

On appeal, counsel for the petitioner addresses the regulation at section 214(c)(2)(A) of the Act, 8 U.S.C. § 1184(c)(2)(A), which provides:

The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import

aliens as nonimmigrants described in section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) to import such aliens. Such procedures shall permit the expedited processing of visas for admission of aliens covered under such a petition. In the case of an alien seeking admission under section 101(a)(15)(L), the one-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.

Counsel resubmits a copy of the petitioner's blanket petition, approved on April 17, 2003, and asserts that pursuant to the above regulation, the beneficiary's time employed abroad has met the requirements in this matter and that the director's reliance on 8 C.F.R. § 214.2(l)(3)(iii) was erroneous.

Upon review, the AAO concurs with counsel's assertions. The petitioner submitted a copy of the blanket petition's approval notice with the initial petition. Consequently, the record contained the documentation necessary for the director to determine that the beneficiary's eight months of employment abroad, while not sufficient otherwise, certainly satisfied the time requirements in this matter since the petitioner had filed and had been approved for a blanket petition. Based on this evidence, the director's decision as it pertains to this issue is hereby withdrawn.²

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

In a letter dated January 30, 2004, the petitioner stated that the beneficiary had been employed as a systems executive by the foreign entity since May 2003. With regard to the beneficiary's qualifications and specialized knowledge, the petitioner stated:

[The beneficiary] has the necessary specialized and advanced knowledge gained at our overseas parent, in the area of analysis and design, coordination, coding, implementing, query tuning testing and trouble shooting projects specific to [the foreign entity's] Global HRMS Implementation (using Oracle ERP popularly referred to as Oracle Applications). A lot of her experience has been to work with and guide the team and the project.

The petitioner further stated that during her employment abroad, the beneficiary was involved in the following areas:

² Although the beneficiary's eight months of employment abroad has been deemed acceptable under the provisions of section 214(c)(2)(A) of the Act, 8 U.S.C. § 1184(c)(2)(A), the AAO notes that the language contained in this section has since been amended. Section 413(a) of Pub. L. 108-447, Consolidated Appropriations Act 2005, has amended this provision by striking the last sentence. Effective June 6, 2005, petitions for initial classification in which the petitioner is covered by a blanket petition are no longer afforded a six-month reduction in the beneficiary's requisite year of employment abroad.

1. On the technical side she has been involved in application software design, development and implementation of web based e-commerce type applications using Oracle Applications, PL/SQL, Java, D2K, etc.
2. Most of her recent experience at [the foreign entity] (i.e. the past 8 months) has been, to work with teams to develop a variety of projects including business applications and ERP applications. Her primary function has been to identify resources (i.e. appropriately skilled professionals) and activities; select the appropriate team for the project; set the goals and the priorities, plan the activities and assist in the execution of the project; monitor the activities and plan; work with the on-site and off-shore team and deliver the project.

Additionally, the petitioner discussed the beneficiary's training while abroad and stated:

We, obviously, have our own way of addressing all these areas. We do have formal and informal training sessions in order to port this collective specialized knowledge to new employees or employees not versed in it. Be we do not issue certificates of this training. This knowledge not only includes our methods and procedures of handling software projects, but it also includes knowledge of our individual employees of off-shore teams and their skill set and relationships. Clearly [the beneficiary] has this knowledge since she has been working for four plus years performing these duties and has, in fact, contributed to developing some of these methods and procedures. Thus, she is that uniquely qualified individual to the extent that we would experience a significant interruption in our business were we to train a US worker to perform these duties. In fact, it would be very expensive and difficult to train a US worker since to do so, we would have to employ him/her for some time. Thus [the beneficiary] does possess the requisite specialized and advanced knowledge without which we would experience a loss of substantial business and goodwill.

Finally, the petitioner stated that the beneficiary possessed a Bachelor of Engineering degree and several unidentified course certificates, and that her work experience with the foreign entity equipped her with the requisite specialized knowledge. The petitioner concluded that it would be impossible to train a US worker to fill the same position proposed to the beneficiary since it would take at least six months to one year of experience working with the foreign entity to possess the same qualifications as those of the beneficiary.

The director found this initial evidence to be insufficient, and consequently issued a request for evidence on February 18, 2004. In this request, the director asked the petitioner to submit evidence which demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures was "advanced" in relation to other employees or that the beneficiary's knowledge could be differentiated in any way from similar positions at other companies. The director further asked for evidence showing that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor, or that his/her advanced level of knowledge of the processes and procedures of the company distinguish her from those with only elementary or basic knowledge. The director also provided a list of specific types of evidence the petitioner should submit, such as human resources records documenting the beneficiary's training and the hours spent in such training, more details regarding the

training provided by the petitioner and the foreign entity, including the minimum amount of time required for an employee to be adequately trained to fill the proffered position, and information regarding the training, if any, the beneficiary would provide to others or receive herself upon arrival at the U.S. entity.

In a response dated April 5, 2004, counsel for the petitioner submitted a letter from the petitioner addressing the director's request for further evidence and challenged the director's request that the petitioner show that the beneficiary's knowledge was uncommon, noteworthy, or distinguished. Relying on requirements for specialized knowledge as outlined in a 1994 Immigration and Naturalization Service (now CIS) memorandum, and interpreted by a subsequent 2002 memorandum which states that "[t]here is no requirement in current legislation that the alien's knowledge be unique, proprietary, or not commonly found," counsel asserted that the director's request for this evidence was inappropriate and contrary to the law and the regulations. See Memo. from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*).

The petitioner's letter, dated April 1, 2004, provided an identical description of the beneficiary's qualifications to that provided in the letter accompanying the petition. Apparently relying on counsel's assertion that the director was not justified in requesting evidence that distinguished the beneficiary's knowledge as uncommon or noteworthy, the petitioner declined to address any of the director's requests for evidence. The petitioner provided a copy of payroll records from its human resources department which verified the dates of the beneficiary's employment, but did not provide a human resources record of the petitioner's training or the time spent working on specific projects.

The director determined that the record did not establish that the beneficiary possessed specialized knowledge. The director stated that, although the beneficiary appears to have received significant training, her duties appeared to be comparable to those that would be performed by any consultant in a parallel position. Although the director notes the petitioner's claim that the beneficiary's knowledge was specialized and advanced, the director also notes that the petitioner failed to provide sufficient evidence to corroborate this claim and further did not provide the evidence requested in the request for evidence as to how the beneficiary acquired her specialized knowledge. The director concluded that the petitioner, described as a software consulting company, did not design and sell software products, nor did the beneficiary work on a team designing software. Instead, the director concluded from the evidence provided that the beneficiary merely used the tools available to her to customize and install software, which is the same practice used by other consultants in her field.

On appeal, counsel submits a detailed brief in support of the petitioner's assertions that the beneficiary possesses specialized knowledge. Counsel again relies on the language of the 2002 memorandum and attempts to refute many of the key points of the director's decision. Counsel further submits a letter from the petitioner which provides a detailed overview of the beneficiary's training and the manner in which she obtained her specialized knowledge.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge.

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 an abbreviated description of the beneficiary's employment in the foreign entity, her intended employment in the U.S. entity, and her general responsibilities as a systems executive. Despite specific requests by the director for evidence showing, for example, the length of time and amount of training necessary for an employee to work in the beneficiary's position, the types of training courses the beneficiary received while working abroad, the types of training she would receive and/or provide to fellow employees while in the United States, and the manner in which the beneficiary's knowledge was advanced in comparison to other similarly qualified employees, the petitioner failed and/or refused to provide such information. The petitioner merely submitted the same language contained in its letter accompanying the petition, which had been deemed insufficient by the director.

On appeal, however, the petitioner provides a detailed overview of the beneficiary's specific tasks and duties and the training associated therewith. This evidence, however, will not be considered. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Therefore, a review of the evidence in the record prior to adjudication indicates that the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes her knowledge as specialized. The petitioner repeatedly states throughout the record and again on appeal that the beneficiary performs a multitude of complex job duties, and possesses specialized knowledge as a result of her specialized training abroad and that such knowledge is far beyond that commonly found throughout the industry. The record prior to adjudication, however, is devoid of evidence that would corroborate the contentions of the petitioner and of counsel. As stated by the director in the request for additional evidence, which sought corroboration of the claims of the petitioner and counsel, insider knowledge of a company's operations does not automatically constitute special or advanced knowledge. It is to be expected that job training at any company will provide any employee with knowledge about the procedures that are germane to that organization. Therefore, the petitioner's failure to provide evidence of the training received and the manner in which the beneficiary's knowledge was distinguished from that of others systems executives

prohibits a finding in the petitioner's favor. 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)). Without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director's request for evidence was extremely specific. In fact, the director's request directly quoted characteristics identified by the 1994 Puleo memorandum as indicative of an alien's specialized knowledge. The director, therefore, was clearly acting in accordance with the Puleo memorandum and afforded the petitioner all available measures to supplement the record with additional evidence. However, counsel maintained his position and belief that the director's request ran contrary to the 1994 memorandum. In addition to relying on language contained in the Puleo memorandum, the director's request advised the petitioner that examples of acceptable evidence included copies of certificates, human resources records, and/or statements from authorized representatives of the petitioner attesting to the training provided to the beneficiary, including both classroom and on-the-job training. Although specifically requested by the director, the petitioner did not provide any evidence of the beneficiary's training, experience, daily duties, or level of expertise. As discussed above, the 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).

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)).³ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed

³ 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.

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 provide a specialized service, 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]imply 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 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's only contention that the beneficiary's knowledge is more advanced than other systems executives is its assertion that the beneficiary's training with the foreign entity equipped her with specialized and advanced knowledge of the petitioner's processes and methodologies. Again, the petitioner has not provided any information pertaining to the duties and training of the beneficiary or of the other systems executives employed by the petitioner, nor has it focused on any specific process or procedure in which the beneficiary has expertise. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of the foreign entity's methodologies and software systems as advanced or special and precludes a finding that the beneficiary's role is of crucial importance to the organization. As stated previously, 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 Soffici*, 22 I&N Dec. at 165.

Instead of providing relevant documentation in response to the director's request for evidence, the petitioner, through counsel, refused to address the director's requests or acknowledge the stated deficiencies in the record and relied on the Puleo memorandum as a means for justifying this position. In reference to the Puleo memorandum, counsel claims that the beneficiary's knowledge is valuable to the petitioner's competitiveness and is critical to preventing significant interruption of business. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. 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.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. Rep. 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." *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 to all employees with specialized knowledge, but rather to "key personnel" and "executives.").

The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish supporting evidence in support of its contentions. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden, and therefore the petitioner's reliance on the allegedly erroneous request for evidence as a basis to overturn the denial is misplaced and unpersuasive.

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.*, 745 F. Supp. 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.

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.