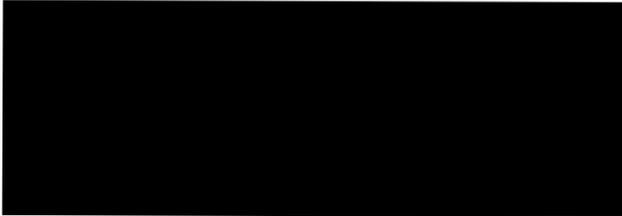


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FILE: EAC 03 123 50054 Office: VERMONT SERVICE CENTER Date: **APR 03 2006**

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, Vermont Service Center, denied the petition for a nonimmigrant visa, and the decision was upheld after reviewing subsequent motions to reopen and/or reconsider.<sup>1</sup> The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the business of software applications. It seeks to extend the employment of the beneficiary as an applications engineer pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director determined that the petitioner had not established that (1) the beneficiary possesses the requisite specialized knowledge for the intended position or that (2) the position required an individual with specialized knowledge.

On appeal, counsel for the petitioner alleges that the director's decision was an abuse of discretion because the petitioner had submitted sufficient evidence to establish that the beneficiary would be employed in a position requiring specialized knowledge. In support of this contention, counsel submits a brief and additional evidence.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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<sup>1</sup> This petition was originally denied due to abandonment on August 12, 2003. The petitioner filed a motion to reopen and/or reconsider on August 28, 2003, which was granted by the director. The director upheld the previous decision, and issued a second denial on October 10, 2003. On October 28, 2003, the petitioner filed an appeal which the director treated as a motion, and once again the decision was upheld on May 19, 2004. The petitioner now submits the same appeal of the October 10, 2003 decision to the AAO for consideration.

Upon review, it is noted that since the director's decision of May 19, 2004 was unfavorable to the petitioner, the director should have promptly forwarded the decision to the AAO for consideration. *See* 8 C.F.R. section 103.3(a)(2)(iii) and (iv). Had the director done so, the petitioner would not have been obligated to file a second appeal in this matter.

- (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 the L Supplement to Form I-129, the petitioner stated that the beneficiary was employed by the foreign entity for nearly two years before coming to the United States in May 2000. The petitioner further clarified that the beneficiary entered the United States as an L-1B intracompany transferee with specialized knowledge and described his position as follows:

In the position of Applications Engineer, [the beneficiary] will be primarily responsible for working with Applications Consultants to design, develop, and implement improvements and additions to [the petitioner's] Rhythm Demand Management product suite of supply chain management software applications. In this position he will utilize his degree in Engineering as well as his highly specialized knowledge of [the petitioner's] Rhythm Demand Management product suite, including the Rhythm Demand Planner, Rhythm Demand Analyzer, and Rhythm Demand Administrator, and [the petitioner's] procedures and techniques for the design, development, implementation, integration, and testing of software applications for the Rhythm Demand Management product suite. His duties will include: consulting with Applications Consultants to plan, design, and develop supply chain management software applications to resolve specific needs of industrial clients; implement and integrate new applications and improvements with existing client systems and existing applications for the Rhythm Demand Management product suite; perform issue replication, resolution and verification for Rhythm Demand Management applications; and perform on-site systems, integration, and acceptance testing for new Rhythm Demand Management applications.

In a statement submitted with the petition dated March 3, 2003, the petitioner further described the background for the beneficiary's qualifications as follows:

[The beneficiary] was employed by [the foreign entity] in the position of Senior Consultant continuously and without interruptions from August, 1998 to May, 2000. During that time, [the beneficiary] was primarily responsible for the design, development, implementation, integration, and testing of supply chain management software applications for [the petitioner's] Rhythm Demand Management product suite. In this position he acquired highly specialized knowledge of [the petitioner's] Rhythm Demand Management product suite, including the Rhythm Demand Planner, Rhythm Demand Analyzer, and Rhythm Demand Administrator, and [the petitioner's] procedures and techniques for the design, development, implementation, integration, and testing of software applications for the Rhythm Demand Management product suite.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on April 17, 2003, which specifically requested evidence that the beneficiary possesses specialized knowledge and that such knowledge was not general knowledge held commonly through the industry. The director advised that the petitioner should substantiate the beneficiary's advanced level of knowledge of the petitioner's processes or procedures that distinguished him from other employees, submit evidence of the training the beneficiary has received in contrast with that of less qualified employees, and provide an explanation as to how the beneficiary's knowledge is more specialized than the knowledge of other similarly qualified applications engineers throughout the industry.

Counsel for the petitioner submitted a brief response on July 31, 2003. In this two page letter, counsel for the petitioner alleged that it had clearly explained in the petition that the beneficiary possessed specialized knowledge, and that such knowledge was acquired as a direct result of his employment with the foreign entity from August 1998 to May 2000. Instead of submitting additional evidence or responding to the specific requests of the director, counsel merely concluded that the beneficiary "fulfills the requirements for employment in a specialized knowledge professional capacity as required under 8 C.F.R. §214.2(l)(1)(ii)(E) and under the U.S. INS memorandum for all service center directors dated December 20, 2002. . . ."

On August 12, 2003, the director denied the petition. The director noted that pursuant to 8 C.F.R. § 103.2(b)(8), the petitioner had been given twelve weeks to respond to the director's request for evidence issued on April 17, 2003. Noting that the due date for the response was July 13, 2003, and that the petitioner's response was not received until July 31, 2003, the director advised that the petition was considered abandoned and denied the petition pursuant to 8 C.F.R. § 103.2(b)(15). The petitioner filed a motion to reopen on August 28, 2003, alleging that the required initial evidence was submitted with the petition. Counsel for the petitioner restated the claims of the beneficiary's qualifications presented with the petition, including copies of the original supporting evidence, and also submitted an e-mail statement from the beneficiary's manager dated August 20, 2003 which reiterates the qualifications of the beneficiary.

On October 10, 2003, the director denied the petition. The director noted that the evidence submitted with the petition and in support of the motion was insufficient to establish that the beneficiary's

knowledge was more specialized or distinct than that of other similarly qualified applications engineers. The director further noted that the petitioner failed to specifically respond to the deficiencies in the record identified by the director in the request for evidence and that counsel's response, while noteworthy, was of little probative value without evidence to support the claims.

Counsel filed an appeal on October 28, 2003. The director treated the appeal as a motion to reopen and/or reconsider, and the director upheld the prior decision. Counsel now appeals the October 10, 2003 decision to the AAO.

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, his employment in the U.S. entity, and his responsibilities as an applications engineer within the U.S. entity. Despite specific requests by the director, namely to provide evidence of the training the beneficiary had received, the petitioner failed to provide such information. 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's knowledge is specialized and cites a number of job duties, the nature of which cannot be fully understood by Citizenship and Immigration Services (CIS) based on the description provided. The petitioner further asserts that the beneficiary possesses specialized knowledge as a result of his employment with the foreign entity from August 1998 to May 2000 and that such knowledge is far beyond that commonly found throughout the industry.

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)).<sup>2</sup> 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

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<sup>2</sup> 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.

considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

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

*Id.* at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to 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.

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.").

Here, the petitioner's main contention is that the beneficiary's knowledge of the petitioner's Rhythm Demand Management product suites is "highly specialized." Specifically, the petitioner alleges that the beneficiary's past experience with the foreign entity has solidified his specialized knowledge of this particular application. However, the petitioner has not provided any information pertaining to the duties and training of the beneficiary or of the other similarly qualified persons employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees.

The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of the applications used by the petitioner as advanced or special and precludes a finding that the beneficiary's role is of crucial importance to the organization. The director specifically requested evidence in the form of training documentation and history, as well as a specific discussion of the manner in which the beneficiary's knowledge and experience sets him apart from other similarly qualified applications engineers in the field or other employees of the petitioner with similar training and qualifications. The petitioner, however, ignored this request, and continually asserted that the evidence submitted, despite the director's discussion of the deficiencies, was adequate to establish that the beneficiary possessed specialized knowledge.

The director's request for evidence was extremely specific in requesting clarification that the beneficiary's claimed specialized knowledge was not merely general knowledge held commonly through the industry. The director afforded the petitioner all available measures to supplement the record with additional evidence. However, although specifically requested by the director, the record contains no evidence of the beneficiary's training, experience, daily duties, or level of expertise. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner refused to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the petitioner and/or foreign employer. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, the petitioner appears to base its appeal on the expectation that the AAO will accept its uncorroborated assertions that the beneficiary possesses specialized knowledge. 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 claim that the beneficiary has been employed by the petitioner and the foreign entity since 1998 and that most of this period was devoted primarily to work with the Rhythm Demand Management product suite does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner

has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for a similar period.

On appeal, counsel submits for the first time additional evidence in support of its claims that the beneficiary's knowledge of the petitioner's applications is highly specialized. Counsel submits a copy of the petitioner's Demand Management Brochure, an academic evaluation for the beneficiary, and continues to rely on the December 20, 2002 Memorandum for All Service Directors regarding the Interpretation of Specialized Knowledge by Fujie O. Ohata as evidence that the beneficiary is qualified for an extension of his L-1B status. The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish evidence in support of its contentions. Counsel makes no attempt to overcome the reasons for the director's stated grounds for denial, which specifically address the petitioner's failure to respond to the request for evidence and failure to support its statements with corroborating documentary evidence.

The petition was denied by the director because the record of proceeding did not contain sufficient evidence to meet the petitioner's burden. As previously stated, failure to submit evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Furthermore, the AAO notes that the counsel for the petitioner relies heavily on the prior approval of the beneficiary's L-1B status as evidence that the beneficiary does in fact possess specialized knowledge. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The prior approval does not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship continues to exist between the U.S. petitioner and a foreign entity.<sup>3</sup> *See* 8 C.F.R. § 214.2(l)(14)(ii)(A). Although the petitioner claims that the foreign entity is a wholly owned subsidiary of the U.S. petitioner, no documentary evidence was submitted to support the claim. The petitioner failed to submit evidence which clearly establishes the ownership structure of the U.S. and the foreign entity and which corroborates the petitioner's claims. 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. A petitioner must establish ownership and control in order to show a qualifying relationship exists. Stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> Although the petitioner presented evidence of an approved blanket petition that showed that the foreign employer was a wholly-owned subsidiary of the petitioner, this petition expired on May 2, 2002, nearly one year prior to the date the present petition was filed. No evidence was presented to show that the same qualifying relationship continued to exist.