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U.S. Citizenship  
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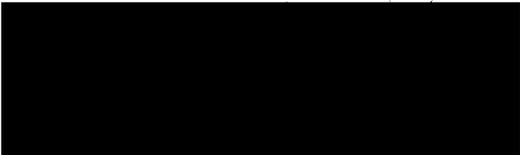


File: WAC 04 206 52734 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

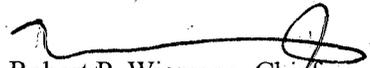
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief  
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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the import, export and sale of fine gemstones and mineral specimens. It claims to operate a joint venture with [REDACTED] located in Moscow, Russia. The petitioner seeks to employ the beneficiary as its director of purchasing and sales.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a specialized knowledge capacity in the United States.

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 the director "ignores the evidence that the beneficiary has specialized knowledge in the position offered to him." Counsel asserts that the director improperly relied on case law that predates the current statutory definition of specialized knowledge and current requirements for the L-1B nonimmigrant classification as outlined in two legacy Immigration and Naturalization Service policy memoranda issued in 1994 and 2002, respectively. Counsel submits a brief and additional evidence in support of the appeal.

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

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

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

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

On the I-129 petition, the petitioner stated that the beneficiary would: "Attend trade shows, visit retailers. Describe purchasing process, access of foreign company to gem sources. Negotiate sale contracts, purchase price, and delivery options."

In a June 29, 2004 letter submitted in support of the petition, the petitioner described the beneficiary's proposed duties as follows:

[The beneficiary] would continue his duties as principal gem purchaser, but in addition he would serve as the Director of Sales and Marketing in the United States. [The beneficiary] would use his in-depth knowledge of the mining industry in Russia and specifically the requirements of Demantoid Garnet mining, to select customers, set prices and set reasonable delivery expectations. [The beneficiary's] knowledge of [the foreign entity's] internal pricing procedures and gem handling protocol vis-à-vis Russian export laws and taxation are essential to the appropriate pricing and marketing of this exciting new mineral. In addition, [the beneficiary] has an extensive background in gem sales, which we believe will be invaluable to creating and sustaining long-term success for our new joint venture. For instance, at the June JCK Jewelry Show in Las Vegas, arranged for [the petitioner] to sell to "American Collectibles Network", a television gem sales corporation. This sale could lead to excellent future business, but it will require [the beneficiary] to visit the mines and select 2,000 3-4mm stones to complete the sale and export them to the United States. We anticipate that [the beneficiary] will be in the United States between four and six month each year. [The beneficiary] will continue to travel the world looking for gem purchasing opportunities. In

addition, he will supervise the mining activities at the Demantoid Garnet mine in Russia and engage in any re-negotiation or modification of the existing exclusive sale contract with the mine operators. [The beneficiary] will have complete authority to negotiate on our behalf and will receive only general supervision from the directors of [the petitioner] and [the foreign entity].

The petitioner indicated that the beneficiary "has an in-depth knowledge and understanding of how gems are purchased, graded and transported across international boundaries." The petitioner further stated that the beneficiary has over ten years of experience as a gem purchaser for the foreign entity, including experience in negotiating with supply companies and evaluating the quality of gems. The petitioner stated that the beneficiary "understands the nature of the retail gem market and he understands the changes that occur from time to time in the taste and fashion of the gem market."

The petitioner also submitted a February 23, 2004 letter from the director of the foreign entity, who indicated that the beneficiary had been employed by the foreign entity as its general manager since September 1991, with the following responsibilities:

His duties were to develop marketing strategy of the company as well as to establish valuable business contacts with companies and individuals all over the world in the field of gems and mineral specimens for collection. He was the leader of different mining projects, field trips, participated in various International Gem and Mineral Shows representing the company. [The beneficiary] has become an expert in gems and [m]inerals evaluation which includes selling and buying as well as marketing of our products.

His valuable work helped to bring the company to international level. He established excellent business and personal contacts with curators of various museums of natural history (Japan, USA, Germany, France, etc.) helping them to obtain priceless mineral and gem specimens for their collections.

On July 23, 2004, the director requested additional evidence to establish that the beneficiary has specialized knowledge. Specifically, the director instructed the petitioner to submit: (1) organizational charts for the United States and foreign entities clearly depicting the beneficiary's current and proposed positions, and the total number of employees working for each company; (2) the number of foreign nationals working at the U.S. location where the beneficiary will be employed and the type of visa held by each; (3) the number of persons holding the same or similar position with the U.S. company; (4) an explanation of how the duties the beneficiary performed abroad and those he will perform in the United States are different or unique from those of other workers employed by the petitioner or similar U.S. employers; (5) a detailed explanation of the equipment, system, product technique or service of which the beneficiary has specialized knowledge and whether it is used or produced by other employers in the United States and abroad; (6) an explanation of the beneficiary's training and how it is exclusive and significantly unique in comparison to that of the petitioner's other employees or another person in the petitioner's field; (7) if applicable, a description of the training the beneficiary will provide to the petitioner's other workers; and, (8) an explanation regarding the impact on the petitioner's business in the event that the petitioner is unable to obtain the beneficiary's services.

In a response dated September 29, 2004, the petitioner emphasized the complexity of the international gem trade and the beneficiary's many years of experience with his foreign employer, "where he has learned exhaustively how to export gems from the former Soviet Union and Russia in particular." The petitioner further noted that the beneficiary possesses experience in negotiating contracts with mine owners that is not possessed by any of the petitioner's employees, and explained that the petitioner typically has utilized intermediaries in order to import gemstones from the former Soviet Union, at great expense to the company.

The petitioner further provided the following information regarding the knowledge possessed by the beneficiary, specifically related to the demantoid garnet:

There is only one mine that is located in Russia that is currently producing these stones. [The beneficiary's] company has an exclusive contract with that mine. Only individuals who work with Stone Flower have access to this stone. [The beneficiary] has more experience with demantoid garnets than any other individual currently working at Stone Flower. This experience allows him to quickly identify and grade demantoid garnets as well as providing him with an in-depth knowledge of the quality and quantity of stone that the mine will produce. This knowledge is not only specialized but unique. Additionally, because this stone is unique, that [sic] export requirements for Russia are also unique. He learned the export requirements for this type of garnet while working at Stone Flower. Stone Flower has developed its own protocols for dealing with the Russian government in a smooth and timely manner regarding the exportation of these stones. Again, [the beneficiary] learned this protocol (in fact, he was responsible for developing most of them while working at Stone Flower). . . . While we would be happy to see him provide training in the grading and evaluating of demantoid garnets to our employees[,] [t]his requires an in depth knowledge of the mine and stones it is producing, the procedures for transporting these stones to Stone Flower, the in-house protocols to process these stones and get the necessary exit licenses from the Russian government, international shipping charges and procedures for stones, and importation requirements for the United States. While some of this knowledge . . . is shared by individuals at [the petitioning company], the beneficiary's knowledge of the demantoid garnet and the unique procedures for its exportation from Russia are unique. While there may be other individuals working in Russia for Stone Flower that have some of this knowledge, [the beneficiary] is the only individual to put all these pieces together. His duties in regard to the demantoid garnet will require him to spend time in Russia observing the mine activities as well as spending time in the United States discussing the demantoid garnet with wholesalers, retailers and other potential customers.

The petitioner indicated that it does not currently employ any foreign employees in the United States, and explained that the beneficiary's proposed position is newly created in order to facilitate the import and sales of the demantoid garnet. In response to the director's request for an explanation regarding the impact upon the petitioner's business in the event that the visa petition is not approved, the petitioner's president stated:

I believe it is beyond comprehension. We are making a gigantic push with the demantoid [sic] garnet since there is a great deal of interest. There is always a great deal of interest in a

new stone. . . . We have already preliminary contracts to provide demantoid garnets to large-scale distributors. A loss of [the beneficiary's] services would mean that we would loss [sic] approximately 50-75% of this business.

The petitioner also submitted a September 25, 2004 letter from a director of the foreign entity, who provides the following information regarding the beneficiary's experience abroad:

[H]e has developed in an-depth knowledge of various aspects related to the rating and evaluation of various stones as well as in general the export/import requirements of various countries around the world.

[The beneficiary] also has an in-depth knowledge of the demantoid green garnet. He is our negotiator with the mine that produces the demantoid garnet and he is the principal grader of those stones. He has been working with the demantoid garnet since 1993. Although he has trained others in their selection, valuation, transportation, he remains in charge of our demantoid garnet department. Additionally, [the beneficiary] developed and implemented the protocols we use to transport the gems from the mines to our offices, sort and grade the gems once they arrive[,] [a]ssign appropriate prices, complete the necessary reports to the Russian government, arrange for the sale and international transportation of the demantoid garnet to buyers overseas, and arrange protocols with the buyers regarding importation into their country. [The beneficiary] has over 10 years experience in this area.

Please note that Stone Flower has an exclusive contract with the mine that produces the demantoid garnet. [The beneficiary] has an exclusive contract with the mine and also has established special business as well as personal relations with owners of the mine. [The beneficiary] was responsible for negotiating the contract and he is intimately familiar with its terms. We would trust no other individual to renegotiate that contract.

The petitioner submitted a copy of an August 25, 2004 "delivery contract," with English translation, between the beneficiary and a supplier of demantoid garnets, and summary translations of packing slips for shipments of demantoid garnets received by the beneficiary from the same supplier in August 2004.

On October 14, 2004, the director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a specialized knowledge capacity. Specifically, the director determined that the petitioner had not explained how the beneficiary's job duties as purchasing and sales director would distinguish the beneficiary's knowledge as specialized, observing that the job duties described are "standard responsibilities of any purchasing and sales director working in the field." The director further noted that the beneficiary's ability to "manage the petitioner's business" fails to demonstrate a "special knowledge" of the company or "an advanced level of knowledge in the organization's processes and procedures."

On appeal, counsel recites excerpts from letters previously submitted by the petitioner regarding the beneficiary's qualifications and the petitioner's need for his services in a specialized knowledge capacity.

Counsel notes: "It is difficult to see how the petitioner could more specifically state how the beneficiary would be used in the position offered. Clearly the duties require someone with the beneficiary's specialized knowledge. An individual unfamiliar with exporting demantoid garnets from Russia cannot advise individuals on quality, availability, pricing or delivery expectations." Counsel emphasizes documentation previously presented regarding the unique nature of Russian demantoid garnets, and attaches copies of additional articles regarding the demantoid garnet in support of the appeal.

Counsel further asserts that the director relied on case law that is outdated, noting that all of the cases cited in the director's decision pre-date the Immigration Act of 1990, which created the current definition of "specialized knowledge." Counsel relies on a 1994 legacy Immigration and Naturalization Service (INS) memorandum which provides guidance in interpreting the current statutory and regulatory definitions, and asserts that the beneficiary meets several of the characteristics of an alien who possesses specialized knowledge as addressed in the 1994 memo. Counsel emphasizes that the beneficiary's foreign employer has an exclusive contract with the mine that produces the demantoid garnets and is the only company exporting these stones from Russia. Counsel argues that since the beneficiary was the person who negotiated the contract with the mine and developed protocols for exporting the garnets, he has unique knowledge that could only be gained with the foreign company. Counsel submits a copy of the 1994 memorandum in support of the appeal, as well a copy of a 2002 policy memoranda regarding the interpretation of specialized knowledge. *See* Memorandum from ██████████ Acting Executive Assoc. Commissioner, Office of Operations, Immigration and Naturalization Service, *Interpretation of Special Knowledge*, CO 214L-P, (Mar. 9, 1994)("Puleo memorandum"); Memorandum from ██████████ Assoc. Commissioner, Service Center Operations, Immigration and Naturalization Services, *Interpretation of Specialized Knowledge*, HQSCOPS 70/6.1 (Dec. 20, 2002).

On review, the record as presently constituted does not establish 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).

Regarding the petitioner's claim of specialized knowledge, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel places emphasis on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. Merely establishing that the facts of the instant petition resemble a particular example provided in the 1994 memo is insufficient to establish that the beneficiary qualifies for this visa classification. The AAO will weigh guidance outlined in policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *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 that it involves 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)).<sup>1</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 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.

Preliminarily, the AAO acknowledges that the evidence submitted establishes that the beneficiary possesses an advanced knowledge with respect to the Russian demantoid garnet and also appears to have a unique level of access to this particular gem based on his "special business as well as personal relations with owners of the mine" that produces the gems and his contract with the mine. Thus, based on the evidence submitted, the beneficiary does appear to be highly qualified for the position offered in the United States, as well as a recognized expert in the field with respect to this particular gemstone. However, the petitioner has not established that the beneficiary possesses or that the U.S. position requires the type of specialized knowledge defined by the statute and regulations, or that his knowledge, however advanced, is specifically related to the petitioning organization.

The petitioner indicates that the beneficiary's duties in the United States would include visiting retailers, identifying and selecting customers, setting prices, describing the purchasing process to customers and setting reasonable delivery expectations utilizing knowledge of the foreign entity's internal pricing procedures and "gem handling protocol vis-a-vis Russian export laws." However, the record as presently constituted is not persuasive in demonstrating that the knowledge required to purchase, import, market, price and sell Russian

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<sup>1</sup> Counsel objects to the director's citation to precedent decisions which were issued prior to 1990. 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, that the cited cases remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

demantoid garnets is significantly different or uncommon from the knowledge that would generally be held by an experienced gem importer/exporter who is experienced with the Russian market. The foreign entity stated that the beneficiary "developed and implemented the protocols we use to transport the gems from the mines to our offices, sort and grade the gems once they arrive[,] [a]ssign appropriate prices, complete the necessary reports to the Russian government, arrange for the sale and international transportation of the demantoid garnet to buyers overseas, and arrange protocols with the buyers regarding importation into their country."

However, the record contains no explanation of the protocols the beneficiary developed, the types of government reports required, any peculiarities associated with international transport of this particular gem, or the protocols developed for the importation of the gem into other countries. Additional explanation and documentation regarding the contracts negotiated by the beneficiary with the garnet mine owners, the specific processes and protocols he developed, the specific duties the beneficiary performs to "supervise" or "observe" mining activities, the foreign entity's "internal pricing procedures" and "gem handling protocols," as well as additional information regarding the "unique" Russian export laws applicable to the demantoid garnet, would be required to establish that the knowledge held by the beneficiary, while perhaps uncommon, is of sufficient complexity that it would be difficult to transfer to another individual who is experienced in the international or Russian gem 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 further stated that the beneficiary "has an in-depth knowledge and understanding of how gems are purchased, graded and transported across international boundaries," has "experience in negotiating with supply companies and evaluating the quality of gems," "understands the changes that occur from time to time in the taste and fashion of the gem market," and has "in-depth knowledge of various aspects related to the rating and evaluation of various stones as well as in general the import/export requirements of various countries across the world." Again, without further explanation or corroborating evidence, the AAO cannot determine that the beneficiary's claimed knowledge is uncommon or different compared to other gem dealers with international experience. Rather, these areas of expertise appear to be general knowledge that would be held by any experienced gem trader.

Therefore, based on the above, the petitioner has not submitted sufficient evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other gem purchasers employed within the petitioning company or working for other employers within the international gemstone 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*, "[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 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* 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.

The petitioner attempts to differentiate the beneficiary's knowledge as special or advanced by claiming that the petitioner has no other employees with the beneficiary's level of knowledge of the Russian demantoid garnet or Russian export laws, nor his ability to negotiate terms with the mine that produces these stones. The beneficiary's exclusive business relationship with the owners of the Russian mine and knowledge of Russian laws impacting their trade cannot be the basis of finding that he possesses specialized knowledge for the purposes of this visa classification. The AAO accepts the petitioner's assertion that the U.S. company does not currently employ anyone with the beneficiary's specific experience and qualifications. However, the statute and regulations require the petitioner to demonstrate that the beneficiary possesses, and that the proposed employment requires, special knowledge of the *petitioning organization's* product, service, research, equipment, techniques, management, or other interests, or an advanced level of knowledge or expertise *in the petitioning organization's* processes and procedures. The beneficiary's knowledge and expertise, while certainly valuable to the petitioner, has not been shown to relate specifically to the *petitioner's* products, processes or other interests as required by the regulations. As discussed further below, the petitioner has not established that the foreign entity is actually related to the U.S. company, and thus, any knowledge gained by the beneficiary during his employment with the foreign entity could not be considered knowledge related to the petitioning organization.

On appeal, counsel for the petitioner asserts that the beneficiary meets several possible characteristics of an alien who possesses specialized knowledge, as outlined in the 1994 Puleo memorandum. Specifically, the petitioner states that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace; is qualified to contribute to the U.S. employer's knowledge of foreign operating conditions; has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness or financial position; possesses knowledge which, normally, can be gained only through prior experience with that employer; and possesses knowledge of a product or process which cannot be easily transferred or taught to another individual. While these factors 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 discussed above, and for the additional reasons set forth below, the petitioner has not established that the beneficiary's knowledge rises to the level of specialized knowledge contemplated by the regulations, or that his knowledge, even if it could be considered specialized or advanced, relates specifically to the petitioning organization. For this reason, the appeal will be dismissed.

Beyond the decision of the director, and as noted above, the AAO finds a significant deficiency in the petitioner's evidence in that the petitioner has not demonstrated that the petitioner and the beneficiary's foreign employer are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section. In addition to being a separate essential element of eligibility for this visa classification, *see* 8 C.F.R. § 214.2(l)(3)(i),

such a determination is necessary in order to establish that the beneficiary's claimed specialized knowledge relates specifically to the petitioning organization.

The petitioner, [REDACTED], indicated on the L classification supplement to Form I-129 that the U.S. company is a "50-50 Joint venture between Stone Flower (Russian company) and [REDACTED] (U.S. company)." The petitioner also indicated that the beneficiary is coming to the United States to open a new office.

In a June 29, 2004 letter, the petitioner provided the following information with respect to its relationship to the beneficiary's foreign employer:

Over the years, we have formed joint ventures with many different companies from many different parts of the world. We have found these joint ventures very useful in providing us with "insider" access to a foreign system of marketing gems as well as hands-on expertise in mining conditions, purchasing options and foreign import/export regulations. Most of these joint ventures are for a limited period of time, usually for one to five years, for the purpose of exploiting a particular gem find.

One of our most valuable partners over the years has been Stone Flower, Inc., a Russian company. . . .

Over the last several years, [REDACTED] have had an informal cooperative agreement for the purchase and sale of Demantoid Garnet. . . .

Our informal agreement has become so successful that [REDACTED] have decided to formalize our cooperative agreement by forming a 50-50 joint venture to market the [REDACTED] t in North America. In the United States, the joint venture will operate under the [REDACTED] name. Each company will have veto power over the joint venture and have equal responsibilities and risks.

On the basis of this limited information, the director determined that the petitioner is "a joint venture" of the beneficiary's foreign employer.

However, the record does not contain evidence of a joint venture or other qualifying relationship between the petitioner and the foreign entity, as required by 8 C.F.R. § 214.2(l)(1)(3)(i). Accordingly, the AAO cannot determine whether the beneficiary's claimed specialized knowledge relates to the petitioner's organization.

Citizenship and Immigration Services (CIS) accepts the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of section 101(a)(15)(L) of the Act. See 8 C.F.R. § 214.2(l)(1)(ii)(K). Neither the Act nor the regulations provides a definition of the term "joint venture." However, the AAO has applied a broad definition of joint venture in prior decisions. *Matter of Hughes* states that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (quoting a definition from Endle J.

Kolde, *International Business Enterprise* (Prentice Hall, 1973)). *Matter of Siemens Medical Systems, Inc.* states: "Where each of two corporations (parents) owns and controls 50 percent of a third corporation (joint venture), the joint venture is a subsidiary of each of the parents." *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362, 364 (BIA 1986). In order to meet the definition of "qualifying organization," a joint venture must be formed as a corporation or other legal entity. 8 C.F.R. § 214.2(l)(1)(ii)(G). A business created by a contract as opposed to one created under corporation law is not be deemed a "legal entity" as used in section 101(a)(15)(L) of the Immigration and Nationality Act. *Matter of Hughes*, 18 I&N Dec. 289, 294 (Comm. 1982); see also *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970).

In this case, there is no evidence of a "third corporation" or other legal entity formed by the petitioner and the beneficiary's foreign employer, and thus no evidence of a valid joint venture relationship for immigration purposes. In addition, the limited purpose of the proposed joint venture, as described by the petitioner, also raises the question of the petitioner's intent to enter into anything more than a temporary agreement with the beneficiary's foreign employer to obtain the beneficiary's services for marketing the demantoid garnet in North America. The petitioner did not submit any other supporting evidence, such as a joint venture agreement, that would clarify the intent of the two parties.

Further, it is noted that, even if the petitioner and the foreign entity had formed a qualifying 50-50 joint venture prior to the date of filing the petition, the petitioner in this case is not the joint venture itself, but rather one of the partners or shareholders in the claimed joint venture. The partners or shareholders of a 50-50 joint venture do not acquire a qualifying corporate relationship by virtue of forming a joint venture; the qualifying relationship formed exists only between each individual parent and the joint venture entity. Other than the petitioner's statement that the beneficiary would be employed by the joint venture, there is no indication that the petitioner intended to file the petition on behalf of a separate entity.

The evidence of record suggests the possibility that the petitioner and foreign entity's proposed "joint venture" would be a temporary business enterprise that would not be established as a legal entity. At best, the record suggests that the proposed joint venture simply had not yet been formed as a legal entity at the time of filing. In either case, the beneficiary's foreign employer would not have enjoyed a qualifying relationship with an entity in the United States as of the date of filing the petition, and the petition cannot be approved.

Further, absent evidence of a qualifying relationship between the beneficiary's foreign employer and the entity that will employ the beneficiary, the AAO cannot conclude that the beneficiary possesses specialized knowledge *with respect to a company*, or special knowledge *of the petitioning organization's* product, service, research, equipment, techniques, management, or other interests. See 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B); 8 C.F.R. § 214.2(l)(1)(ii)(D).

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).

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