



U.S. Citizenship
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Services

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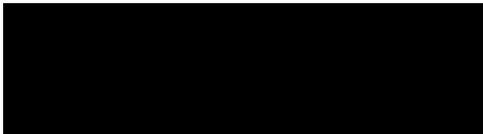


File: EAC 04 042 52020 Office: VERMONT SERVICE CENTER Date: JAN 27 2006

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

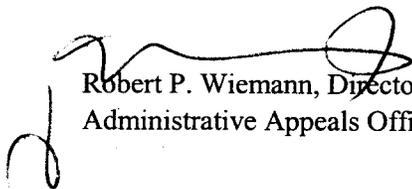
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 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, a New York corporation, is engaged in the import and wholesale of diamonds. The petitioner claims to be a subsidiary of Pinhassi David Diamonds, located in Ramat Gan, Israel. The petitioner seeks to employ the beneficiary in the position of international diamond trader/evaluator for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the position offered to the beneficiary in the United States requires the services of an individual possessing specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On the Form I-290B, Notice of Appeal, counsel for the petitioner asserts that the director's decision is "arbitrary, capricious," and "shows a preconceived intent to deny the application." Counsel asserts that the beneficiary qualifies for an L-1 visa either as an executive or as a specialized knowledge employee. Counsel further emphasizes that the beneficiary "has been recognized by the Service as a treaty trader (E-1) visa which requires similar, if not higher, standards of knowledge and seniority." Finally, counsel asserts that the director applied overly strict criteria in determining whether the beneficiary possesses specialized knowledge. Counsel suggests that, since 1990, the regulations and case law establish that "specialized knowledge" should be interpreted more liberally. Counsel submits a brief in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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:

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.

In an October 27, 2003 letter appended to the I-129 petition, the petitioner explained the need for the beneficiary's services in the United States as follows:

[The beneficiary] will be employed as the buyer/evaluator for [the petitioner]. Currently [the petitioner] employs sales representatives, who do not possess deep expertise of the diamond industry. [The petitioner] requires an individual who has ample knowledge of diamonds, imports and exports, especially in the Israeli-American import market.

The petitioner further described the beneficiary's qualifications for the position:

[The beneficiary] acquired education at The Open University of Jerusalem and thereafter studied at The Institute for Diamond Studies in Israel. He began working [REDACTED] factory as a diamond polisher and throughout the years, he was promoted to a production manager and later to the domestic and international trade manager.

[The beneficiary] is an Israeli national. We have known [the beneficiary] for the last several years through his work in Israel. [The beneficiary] has extensive experience in the diamond business. He worked for Pinhassi David factory in Jerusalem as a diamond polisher and was promoted to a production manager. In 1997 [the beneficiary] was in charge of domestic and international trade for the company. In 1990 [the beneficiary] was employed at the Diamond Burse as a buyer while still managing Pinhassi's factory and trading diamonds. In 2000 [the beneficiary] was accepted as a member of the Diamond Exchange. He participated actively in domestic and international diamond trade.

In support of the petition, the petitioner submitted a June 12, 2002 letter from the managing director of The Israeli Diamond Exchange, Ltd., who confirmed that the beneficiary served as an apprentice at the Diamond Exchange from May 1999 until June, 2001, and indicated that the beneficiary would be eligible to become a candidate for membership in the Exchange based on his completion of the apprenticeship. The petitioner also submitted the beneficiary's resume, and an August 28, 2003 letter from the foreign entity's proprietor, who states that the beneficiary was a salaried employee of the foreign entity from January 1, 1997 until July 2003. Neither the resume nor the letter from the beneficiary's former foreign employer expanded upon the beneficiary's duties while employed with the overseas entity. The petitioner indicated on Form I-129 that the beneficiary had been in the United States since January 23, 2002 and that he was in E-1 status at the time the instant petition was filed on November 29, 2003.¹

On December 10, 2003, the director requested additional evidence. The director advised the petitioner that the record was not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been or will be employed in a specialized knowledge capacity. Accordingly, the director instructed the petitioner to submit the following evidence:

Outline the beneficiary's proposed duties and identify how his/her specialized knowledge will benefit your organization beyond what can be expected of other persons in the same profession.

Submit probative 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 him/her from those with only elementary or basic knowledge.

¹ CIS records show that the beneficiary was admitted to the United States in B-2 nonimmigrant status on January 23, 2002. On July 23, 2002, a U.S. employer apparently unrelated to the petitioning company filed an I-129 petition to classify the beneficiary as an E-1 nonimmigrant treaty trader. The petition was approved on February 4, 2003 and the beneficiary was granted the requested change and extension of status for a validity period of February 4, 2003 to February 4, 2005. (SRC 02 228 62642) The petition approval was revoked on November 17, 2003.

Please submit evidence that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly special or advanced. . . .

How many other L1B nonimmigrant workers do you currently employ in the beneficiary's field of endeavor at the United States entity? Please provide a brief job description for these key employees.

Please identify the manner in which the beneficiary has gained his/her specialized knowledge.

- Identify the total length of any classroom or on-the-job training courses.
- Identify the minimum amount of time required to train a person in the position that you are seeking to fill.

Please submit a statement discussing the type of training (both formal education and in-house training) needed for an individual to be able to adequately perform the duties of the proposed position.

In response to the director's request, the petitioner submitted an undated letter that described the beneficiary's qualifications as follows:

[The beneficiary] has acquired his special knowledge in this profession through studies but mainly through his extensive experience in the diamond business. It started as a young boy when he worked for the Israeli parent company, [REDACTED] factory in Jerusalem as a diamond polisher – to advance through the ranks until he became production manager. This career choice gave [the beneficiary] a unique hand on experience on raw materials, in this case raw diamonds, and a skill which is rare among diamond dealers at the world bourses. They usually deal with the finished product - i.e. an already polished diamond.

[The beneficiary] was promoted as of 1997 in charge of the international trade [REDACTED] [REDACTED] this priceless experience has allowed him to excel in all stages of the manufacturing, processing and trade of diamonds.

[The beneficiary] has completed all the available studies in his profession. He studied in the institute of Diamond Studies in Israel and completed a course in Gemology for a diamond merchant and diamond specialty.

The Immigration and Naturalization Service has recognized [the beneficiary's] special knowledge when they approved his E-1 visa in 2003, a prestigious status which is only granted to individuals in senior position of the treaty tracer [sic] organization. He has been a highly regarding professional since then.

Attached are a few of the instruments used by a professional buyer/evaluator to perform the duties of the position. It is imperative that a buyer/evaluator not only has the trading skills,

but rather possesses also the technical ability to evaluate and re evaluate the qualities of the stone

The petitioner attached photographs of a pointing machine, a microscope and a polariscope. The petitioner explained that in order to utilize a pointing machine it is necessary to understand raw diamonds and understand “raw-polish+color+clarity.” The petitioner asserted: “There are few people who know how to point and understand raw materials – most of the diamond dealers in the world only know how to evaluate polished diamonds. The petitioner further explained that the microscope is used to determine the clarity of a diamond, while the polariscope is used to determine whether diamonds exhibit high internal pressure that may require a special method of cutting and polishing.

The director denied the petition on March 15, 2004, determining that the petitioner had not established that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity in the United States. The director observed:

“[T]he beneficiary’s present and proposed duties as described do not appear to be advanced or special in relation to any diamond trader or evaluator. . . .It would be reasonable to assume that any competent trader/evaluator would develop the skills to point raw diamonds, evaluate polished diamonds, determine clarity and determine under which pressure the diamond was created. In fact, that would appear to be the very purpose of any trader/evaluator – to determine clarity, point raw materials or evaluate raw diamonds using the tools of the trade and knowledge of gems acquired through training and experience. The petitioner has not demonstrated how the beneficiary’s skills are significantly different from other trader/evaluators employed by any gemstone importer/exporter.

The director concluded that the petitioner had not demonstrated that the beneficiary’s knowledge of raw and polished diamonds is substantially different from, or advanced in relation to, any individual similarly employed.

On appeal, counsel for the petitioner asserts that the director’s decision is arbitrary, capricious and shows a “preconceived intent to deny the application.” Counsel claims that the director ignored evidence establishing that the position offered requires specialized knowledge of raw materials as well as “knowledge and the ability to operate in the highly competitive . . . international trade” which was gained by the beneficiary during his employment with the foreign entity. Counsel contends that the director “should have looked at the file in its entirety and use a broad discretion to approve this case which is possible under both theories – the special knowledge acquired by the alien at the parent company – as well as executive/managerial experience.”

Counsel further suggests that the beneficiary possesses the qualifications to be classified as an employee possessing specialized knowledge based on CIS’ prior approval of an E-1 treaty trader nonimmigrant visa petition filed on his behalf by a different U.S. employer. Counsel asserts that the E-1 standards for “essential skills” workers “supersede the L-1 demands,” and suggests that the beneficiary should qualify for both visa categories. Counsel also briefly describes the duties the beneficiary performed in E-1 status with an unrelated

company and asserts: "he accumulated more experience than he had when the Service approved the higher status of E-1."

Finally, counsel claims that the director failed to apply the current definition of "specialized knowledge" as implemented by the Immigration Act of 1990, noting that the definition no longer requires "proprietary knowledge not readily available in the U.S. labor market." Counsel concludes: "The Director should have applied the liberal criteria to the special knowledge issue and should have approved the petition."

On review, the petitioner has not demonstrated that the beneficiary has specialized knowledge or that the beneficiary is to perform duties requiring specialized knowledge in the proffered U.S. position. As a preliminary matter, the AAO notes that counsel's suggestion that the director should have considered the instant petition under the criteria for managerial or executive capacity as defined at section 101(a)(44) of the Act is misplaced. The petitioner clearly indicated that it sought to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge, and the director properly applied the statute and regulations governing this classification. If the petitioner now wishes to classify the beneficiary as an intracompany transferee employed in a managerial or executive capacity, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 214.2(l)(7)(i)(C). The AAO will only consider the petitioner's claim that the beneficiary is eligible for classification as an L-1B specialized knowledge worker.

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

The petitioner has neither asserted nor provided evidence that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or that he possessed an advanced knowledge or expertise in the company's processes and procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner has not provided a job description or even a job title for the last position the beneficiary held with the foreign entity prior to entering the United States as a nonimmigrant in January 2002. The petitioner stated that the beneficiary "was accepted as a member of the diamond exchange" in 2000 and "participated actively in domestic and international trade." The petitioner also emphasized the beneficiary's educational credentials and provided a scant outline of the beneficiary's previous experience with the foreign entity, again, without providing job descriptions. This extremely limited information is simply insufficient to establish that the beneficiary was employed abroad in a position involving specialized knowledge for one year out of the three years preceding the filing of this petition. 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)).

Furthermore, although the petitioner repeatedly stated that the beneficiary was accepted as a member of the diamond exchange in 2000, the record contains a June 12, 2002 letter to the beneficiary from the managing director of The Israel Diamond Exchange Ltd. who states that the beneficiary served as an apprentice with the diamond exchange from May 1999 until June 2001, and is "eligible for candidature as a member" of the exchange. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent

objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, the fact that the beneficiary served as an apprentice with a company other than the foreign entity for over two years shortly before coming to the United States raises questions regarding whether he was employed with the foreign entity in any capacity for one continuous year within the three years preceding the filing of the instant petition, notwithstanding the foreign entity's claim that he remained on its payroll from January 1997 until July 2003, eighteen months following his admission to the United States in B-2 status. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. The petitioner has not established that the foreign entity employed the beneficiary in a qualifying capacity for one continuous year in the three years preceding the filing of the instant petition as required by 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

Similarly, the petitioner has provided no evidence that the beneficiary will be employed in the United States in a position involving specialized knowledge, and again, has provided very little description of the actual duties to be performed by the beneficiary for the U.S. company. The petitioner indicated that the beneficiary would serve as a "buyer/evaluator" and suggested that he possessed knowledge of diamonds, imports and exports, and the Israeli-American import market that is not held by the company's current staff. The petitioner did not, however, provide a job description for the proposed position.

The director noted the deficiencies in the initial filing and specifically requested that the petitioner identify the manner in which the beneficiary has gained his specialized knowledge, including the total length of any classroom or on-the-job training courses, as well as the minimum time required to train a person to work in the position offered in the United States. The director further requested evidence that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly special or advanced. Most importantly, the director instructed the petitioner to outline the beneficiary's proposed duties and identify how his specialized knowledge will benefit the petitioner's organization beyond what can be expected of other persons in the same profession.²

In response to this detailed request for evidence, the petitioner submitted a one-page letter in which it stated that the beneficiary "acquired his special knowledge in this profession through studies but mainly through his extensive experience in the diamond business." The petitioner further stated that the beneficiary's "hands-on" experience with raw diamonds is "rare" among diamond dealers, who usually only have experience with polished diamonds. As noted above, the petitioner indicated that a buyer/evaluator must have trading skills and the technical ability to evaluate the qualities of stone, including the ability to use a microscope, pointing machine and polariscope. However, the petitioner failed to provide the requested description of the

² The AAO notes that counsel for the petitioner indicates on appeal that the December 10, 2003 request for evidence only contained two lines addressing the beneficiary's specialized knowledge. As noted above, the director requested extensive evidence pertaining to the beneficiary's specialized knowledge qualifications. Based on counsel's assertions, it appears that the petitioner and counsel may have overlooked the last page of the four-page request for evidence; however, the record reveals that the petitioner received a complete copy of the document, as it was returned in its entirety with the petitioner's response received on March 3, 2004.

beneficiary's proposed duties requested by the director, nor did it describe its training requirements or the beneficiary's actual training in any detail. 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). A detailed description of the actual job duties to be performed by the beneficiary in a specialized knowledge capacity is material to a determination of his eligibility for this visa classification. Since the petitioner has not provided a job description for the beneficiary's foreign or proposed positions, the AAO cannot conclude that he possesses specialized knowledge or that the United States position requires specialized knowledge, and the petition cannot be approved.

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)).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 primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53.

As discussed above, the petitioner has not described the beneficiary's proposed job duties and therefore has not identified services to be performed by the beneficiary in a specialized knowledge capacity. Based on the minimal evidence in the record, the only conclusions that can be drawn regarding the proposed position is that it requires experience with three specific types of diamond cutting and evaluation tools which appear to be common in the petitioner's industry, and experience in the international diamond trade in general. Since essentially all diamonds in the United States market are imported from international markets, counsel's claim

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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

that the beneficiary's "knowledge and ability to operate in the . . . international [diamond] trade" qualifies as specialized knowledge is unpersuasive. Counsel also claims that the beneficiary's knowledge of raw diamonds is "rare" but has neither substantiated this claim with supporting evidence, nor described how this knowledge would be utilized in the position offered. The record is devoid of any documentary evidence that the beneficiary's proposed position would involve the application of special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. While the petitioner claims that the beneficiary possesses knowledge not held by its current staff in the United States, the petitioner has not adequately demonstrated that the experience with the foreign entity is actually required for the beneficiary's position, or that the beneficiary's knowledge is distinct from any other diamond evaluator with international trade experience. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel asserts on appeal that the Immigration Act of 1990 broadened the definition of "specialized knowledge" such that it no longer requires "proprietary knowledge not readily available in the U.S. labor market." Counsel suggests that the director failed to apply the current, "more liberal" criteria, which only require "special knowledge of the company product and its application in international markets or . . . an advanced level of knowledge of processes and procedures of the company." However, counsel does not further explain why the petitioner believes an inappropriate standard was applied to the facts of the instant petition. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Upon review of the director's decision, the AAO finds that the director applied the appropriate standard, and did not require the petitioner to establish that the knowledge the beneficiary possesses is proprietary or not readily available in the United States.

It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. As properly observed by the director, the petitioner has not explained how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others with a similar educational and professional background. While it is undoubtedly helpful that the beneficiary is familiar with the foreign entity's business, the petitioner has not established that prior experience with the foreign entity is actually required in order to serve as a trader/evaluator for the United States company. This conclusion is supported by counsel's assertion on appeal that the beneficiary's "specialized knowledge" has been enhanced by his employment in E-1 status with an unrelated U.S. employer, and by evidence in the record indicating that at least some portion of the beneficiary's claimed specialized knowledge was gained through formal studies, and through completion of a lengthy apprenticeship with a different foreign company. The beneficiary's claimed specialized knowledge must relate specifically to the petitioning company.

Finally, the AAO observes that the fact that the beneficiary was previously granted classification as a nonimmigrant treaty trader pursuant to section 101(a)(15)(E)(i) of the Act in order to render services to an

unrelated United States petitioner is in no way relevant to a determination of the beneficiary's eligibility to render services to the instant petitioner as a specialized knowledge intracompany transferee pursuant to section 101(a)(15)(L) of the Act. Even if the beneficiary had previously been granted E-1 status in order to accept employment with the instant petitioner, CIS would still be bound to apply the regulations at 8 C.F.R. § 214.2(l) in making a determination in this proceeding, and based on the lack of evidence of eligibility in the record, would still be unable to approve the instant petition.

The beneficiary may be highly qualified for the offered position. However, the beneficiary's knowledge and expertise, while valuable to the petitioner, do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations. In *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." In the instant case the petitioner has attempted to demonstrate that the beneficiary possesses special knowledge of raw materials and tools used in the diamond cutting and evaluation process and knowledge of the international diamond trade. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he would be employed by the petitioner in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the petitioner has a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i). The petitioner did not provide any information regarding the claimed qualifying relationship on the L classification supplement to Form I-129. In its October 27, 2003 supporting letter, the petitioner indicated that the foreign entity is a sole proprietorship owned by David Pinhassi. The petitioner claimed that two individuals own the U.S. company: [REDACTED] (80 percent) and [REDACTED] (20 percent). Although required by 8 C.F.R. § 214.2(l)(3)(i), the petitioner failed to submit supporting documentation, such as stock certificates, articles of incorporation, a stock transfer ledger, etc., to substantiate the claimed affiliate relationship, nor did the director specifically request additional evidence related to this issue. However, the director did request a copy of the petitioner's 2003 IRS Form 1120, U.S. Corporation Income Tax Return, which indicates at Schedule E and at Schedule K that Nimrod Katz owns 100 percent of the petitioner's stock. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Since the only supporting evidence submitted contradicts the petitioner's claim that it has a qualifying affiliate relationship with the foreign entity, the petitioner has not established this essential element of eligibility. For this additional 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).

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.