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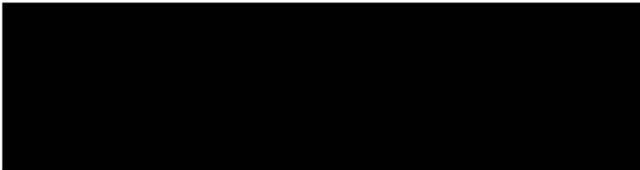
File: WAC 04 260 50691 Office: CALIFORNIA SERVICE CENTER Date: **MAY 11 2006**

IN RE: Petitioner:
Beneficiary:



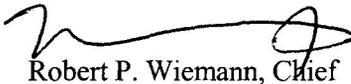
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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 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 is a hotel management company and an affiliate of the beneficiary's foreign employer, Thistle Hotels Limited, located in the United Kingdom. The petitioner seeks to employ the beneficiary as a hotel controller at one of its properties for a two-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the petitioner will employ him in a capacity that involves special knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner provides additional explanation regarding the beneficiary's claimed specialized knowledge and the need for his services in the United States. Counsel submits a brief and additional evidence 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.

The nonimmigrant petition was filed on September 28, 2004. The petitioner attached a job description for the position of hotel controller, which states that the position is responsible for timely financial reporting, preparation of budgets and financial analysis at the assigned property, and supervision of two staff members. The position description indicates that the hotel controller performs the following specific duties:

1. Preparation of monthly financial statements.
2. Preparation of weekly and monthly cash flows for actual and forecast results.
3. Preparation of monthly analysis of operation results.
4. Preparation of annual budget.
5. Ensure that all daily functions of the Hotel operations are being correctly reported and provide management with daily revenue reports.
6. Assist the General Manager in financial operating issues.
7. Ensure all financial reporting is done timely and high emphasis on accuracy.
8. Review of all cash functions to ensure the proper handling and reporting of cash.
9. Oversee the payroll function and ensure proper payment, reporting and filings.
10. Oversee Accounts Payable and Accounts Receivable function.
11. Preparation of an aged receivable report and conducting monthly collection meetings with the General Manager and sales staff and provide Corporation Controller a monthly summary update.
12. Perform monthly account and bank account reconciliation and report any variations to the Corporate Controller.
13. Preparation of monthly journal entries and ensuring entries are recorded into the company’s accounting software system on a timely and accurate basis.
14. Ensure purchase orders are properly prepared and submitted to accounting according to the Company policy and procedures.

15. Ensure the other accounting policies and procedures are followed and recommend changes as needed.
16. Work closely the Department Heads in the implementation of new systems and procedures to ensure a smooth transition.
17. Responsible to assist in conducting employee interview and recommend hiring or terminating of subordinate employees.
18. Review all daily and monthly statistical reports for accuracy and timeliness.
19. Review of month end physical inventory counts and audits.
20. Assist in the recommendation and installation of new software and IT systems which will enhance operations.
21. Perform all other duties as assigned.

The position description listed the minimum requirements for the position as a bachelor's degree in accounting and four years of related accounting experience in the hospitality industry.

The petitioner also submitted a job description for the beneficiary's current position as a cluster hotel accountant for four hotels operated by the foreign entity, which lists the position's main responsibilities and duties, in part, as:

- To prepare monthly/periodic financial reports incorporating cashflow forecasts
- Preparation of monthly analysis of operational results
- Preparation of annual budget
- **To be directly involved in carrying out the duties of all control staff with in cluster . . . to ensure the smooth running of the operation and achievement of standards . . .**
- To liaise with operating departments and continually assess control procedures. . .

Daily Control

- **To ensure** revenue from every point of sales and ledger is accounted for in full. . .
- Ensure statistical postings with financial systems are accurate
- Preparation, control and processing of Travel Agency commission.
- Prepare Monthly petty cash and post in financial systems.

Purchasing Control

- **To ensure** control procedures concerning Purchase orders, [check] request are fully controlled and documented.
- To ensure that all orders enter in to financial system are correctly coded. . . .
- Ensure purchase orders are goods receipted with in financial system on the day of delivery. . .
- Monitor all book-out in to and out of hotel ensuring all revenue are captured . . .
- Assist in month end closing by preparing accrual and make the journal entry into the financial system every month end. . . .

Finally, the petitioner submitted a copy of the beneficiary's resume, which indicated that since 2003 he has worked as a cluster hotel accountant, assisting with the day-to-day running of six London hotels, preparing reports and period forecasts, and assisting in the budgeting process for four properties. The resume indicates that the beneficiary has worked for the foreign entity since 1999 in the capacities of assistant manager, assistant foods and beverage manager, revenue controller and assistant financial controller prior to assuming his current role.

The petitioner failed to specifically address the beneficiary's qualifications as a nonimmigrant intracompany transferee with specialized knowledge.

On October 7, 2004, the petitioner issued a request for additional evidence, instructing the petitioner to: (1) explain 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 other U.S. employers in similar positions; (2) explain exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge and indicate if it is used or produced by other employers in the United States and abroad; (3) explain how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in the beneficiary's field; and (4) describe the impact upon the petitioner's business if the petitioner is unable to obtain the beneficiary's services, and what alternative action will be taken to fill the responsibilities.

In response, the petitioner submitted an October 12, 2004 letter which briefly addressed each of the director's requests. With respect to the beneficiary's special or advanced duties, the petitioner explained that the hotel in which the beneficiary would work is located on a rural island with a population of only 7,000. The petitioner noted that it would require the beneficiary to perform implementation of and ongoing training in accounting and operational procedures, assist with strategic business planning for the property, and present reports to senior management. The petitioner explained: "These duties that the beneficiary will perform require a higher skill level of accounting and management which is currently not present on the island of Molokai."

The petitioner further stated that it operates the only luxury hotel on the island of Molokai, and thus the beneficiary will possess "higher skill levels in use of accounting, spreadsheet, point of sale and inventory software as well as management skill than those on the island of Molokai. The beneficiary also has previous experiences of dealing with the International Traveler in a luxury premises."

With respect to the beneficiary's training, the petitioner stated:

The beneficiary possesses the management level knowledge and higher level accounting skills which is currently not available on the island of Molokai. The beneficiary has obtained these qualities while being employed in a high profile, Central London 4 Star Deluxe Property where he is responsible for a team of 13 people. The beneficiary was responsible for the implementation of several procedure changes and was a key member of the management team when the Finance department underwent a change from single property accounting to cluster accounting. (The Cluster now consists of eight properties.) The beneficiary has been trained in money handling procedures, foreign currency transactions and Customer Service,

alongside his accounting experiences, all of which have been while the beneficiary has been promoted on several occasions from the position of Revenue Controller to that of Hotel Cluster Accountant for these premises. The beneficiary also has extensive experience of the operational side of the hotel industry which has arisen from being Management within the same company.

Finally, the petitioner stated that if it is unable to obtain the beneficiary's services, "the petitioner will need to hire a consultant service to commute to the island to perform skilled accounting and management duties which may increase costs significantly over those of the alien, causing financial hardship on the petitioner."

The petitioner attached an October 11, 2004 letter from the president of a Honolulu-based executive search firm, who indicated that her company has assisted the petitioner with several searches for their Molokai Ranch operations, including the hotel controller position. She indicated that it had been a challenge to find qualified candidates in Hawaii or in the mainland United States, and stated that after several months, the search firm was unable to recruit qualified candidates to fill the offered position. She noted "living on Molokai is a particular challenge, especially for a candidate with a family."

The director denied the petition on October 26, 2004, concluding that the beneficiary does not possess specialized knowledge, nor does the offered position require the services of an individual possessing specialized knowledge. The director acknowledged the detailed position descriptions submitted by the petitioner and observed that the job duties are essentially the "standard responsibilities of any employee working in the area of accounting." The director noted that the petitioner had not established that the beneficiary's knowledge is different from or surpasses the ordinary knowledge of an employee working in his particular field, or that his knowledge related specifically to the petitioning organization.

On appeal, counsel for the petitioner attempts to clarify the beneficiary's specialized knowledge qualifications and the purpose of his transfer to the United States company. Counsel explains that the petitioner's ultimate parent company, BIL International Ltd. ("BIL") purchased the beneficiary's foreign employer, Thistle Hotels ("Thistle"), in June 2003, and subsequently implemented new computer systems, operating procedures, documentation and structures to bring the Thistle group "under the umbrella of BIL in hope of creating a company wide system that included all of BIL's properties." Counsel asserts that a senior management group worked alongside key operational personnel from Thistle, including the beneficiary, to implement the new procedures. Counsel further explains:

During this installation and implementation, [the beneficiary] worked extensively installing new financial procedures, including new financial computer systems and new financial operating procedures, and ensuring that the financial reporting packages and operational training were to the level and standards of other BIL properties. . . .

After the success of the implementation of these new procedures at Thistle, BIL decided that all of BIL's other properties should install and implement these new procedures for the purpose of bringing all of BIL's properties under the same operational procedures and computing systems. BIL's belief is that if all of BIL's properties were under the same

operational procedures and computing systems, the individual properties and BIL would run more efficiently saving BIL substantial of operating costs.

BIL therefore needs to implement these new procedures at [the U.S. company], a property owned by BIL. BIL also needs to train staff in these new procedures at [petitioner]. [The petitioner] chose [the beneficiary] based on [the beneficiary's] specialty knowledge of the BIL procedures and operating systems and [the beneficiary's] vast experience and understanding of BIL's new procedures gained through [the beneficiary's] work experience implementing these new procedures and systems at Thistle.

Counsel asserts that the beneficiary is "clearly" a specialized knowledge employee based on his advanced level of knowledge of the financial processes and procedure of BIL and his "extensive experience installing and implementing new procedures and operations as well as working under these procedures and operations while employed at Thistle, a company owned and operated by BIL." Citing *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), counsel asserts that the beneficiary possesses specialized knowledge needed "to carry out the key function of implementing BIL's new procedures and systems essential to Molokai's and BIL's business operations." Counsel states:

Without [the beneficiary's] expertise, [the petitioner] will be unable to implement BIL's new procedures and systems and will cause BIL and [the petitioner] to incur substantial financial losses. Therefore, [the beneficiary] is clearly a specialized knowledge employee under the Commissioner's definition of "specialized knowledge" in the *Matter of Penner* because [the beneficiary] will be carrying out the key function of implementing BIL's new procedures and systems which are essential to the success of [the petitioner's] and BIL's business operations.

While the USCIS correctly stated that many of the job duties that [the beneficiary] will be required to handle when employed as a Hotel Controller at [the petitioning entity] are that of a typical accountant, the USCIS failed to take into account [the beneficiary's] specialized knowledge of BIL's international financial procedures and operating systems that are required to perform these routine accountancy tasks.

Furthermore, the USCIS failed to consider the other duties that [the beneficiary] will be required to handle while employed at [the U.S. entity] which are based exclusively on [the beneficiary's] specialized knowledge of BIL's operations and procedures. . . .[The petitioner] further requires [the beneficiary] to use [his] specialized knowledge of BIL's new operating procedures and systems to train [the petitioner's] employees in these new procedures.

In support of the appeal, counsel submits what appears to be a draft letter that was apparently intended to be signed by an officer of either the beneficiary's employer or BIL. The letter is addressed to Citizenship and Immigration Services, but is not printed on company letterhead or signed. The content of the letter is similar to that of the petitioner's brief. Counsel also submits a revised resume for the beneficiary that provides the following revised job description for the beneficiary's current position with the foreign entity:

For twelve months I have been involved with the resourcing, implementation and training of new systems and procedures to change the 'Thistle' way to the 'B I L' way. This has incorporated traveling around the country presenting various training sessions and offering support and assistance to all the Company hotels. Prior to this I assisted with the day to day running of six Central London hotels, the preparation of reports and period forecasts/reviews. I also assisted in the budgeting process for four of these properties.

On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. See *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 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.

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

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, 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.

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. 117, 119 (Comm. 1981). 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.")

In this matter, although the petitioner provided lengthy job descriptions for the beneficiary's current and proposed positions, prior to the denial of the petition, the petitioner 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, that he possessed an advanced knowledge or expertise in the company's processes and procedures, or that he would apply "specialized" or "advanced" knowledge in order to perform the duties of the position offered in the United States. See 8 C.F.R. § 214.2(l)(1)(ii)(D). Rather, as noted by the director, the petitioner consistently described an employee performing the accounting, financial control and financial reporting duties that would be performed by any accountant or controller in the hospitality industry. The petitioner failed to identify any aspect of the beneficiary's position that involves special knowledge specific to the petitioning organization and its foreign affiliate and therefore failed to satisfy the essential element of eligibility for this visa classification.

For example, when requested by the director to provide an explanation regarding the "special or advanced" duties the beneficiary has performed abroad and will perform in the United States, the petitioner mentioned that the offered position requires a "higher skill level of accounting and management which is currently not present on the island of Molokai." Similarly, when asked to identify the particular product, service, research, equipment, techniques, management or other interests of which the beneficiary has specialized knowledge, the petitioner again mentioned that the beneficiary has "higher skill levels in use of accounting, spreadsheet, point of sale and inventory software as well as management skills than those on the island of Molokai," and has "previous experiences of dealing with the International Traveler in a luxury premises." The fact that the small Hawaiian island on which the beneficiary would work does not have a qualified accountant to fill the position at the petitioner's hotel does not establish that the actual duties of the position require a person with specialized knowledge of the petitioner's products, services or other interests or an advanced level of knowledge of the company's processes and procedures as required by the statute and regulations. The evidence failed to establish that the beneficiary possessed, or the proposed position required, specialized knowledge specific to the petitioner's organization. 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, the petitioner conceded that the company has made efforts to recruit a qualified candidate for the position outside of the organization, and would be able to hire a consultant service to perform the "skilled accounting and management duties" of the position in the event that it is unable to obtain the beneficiary's

services. The fact that a consultant with no prior experience within the petitioner's group of companies would be qualified to fill the position further supports a conclusion that the position merely requires the services of a qualified accountant with relevant work experience, rather than specialized knowledge related to the petitioner's organization.

It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. The director specifically requested that the petitioner indicate how the beneficiary's duties and training are different from those of others employed by the petitioner's group or by other employees working in the same field. As noted above, the petitioner did not describe any advanced duties relevant to other employees within the company or the industry, but rather stated that the position required a higher level of accounting and management skills than could be readily found in the local labor market.

With respect to the beneficiary's training, the petitioner again stated that he "possesses the management level knowledge and higher level accounting skills which is currently not available on the island of Molokai." The petitioner referenced the beneficiary's responsibility for implementing "several procedure changes" and noted that he was a "key member of the management team when the Finance department underwent a change from single property accounting to cluster accounting." The petitioner did not further describe the foreign entity's procedures, the significance of this experience, or provide evidence that knowledge of such procedures would be required for the U.S. position. The petitioner further stated that the beneficiary had been trained in "money handling procedures, foreign currency transactions and Customer Service, alongside his accounting experience." The petitioner failed, however, to explain and document how the beneficiary's training and experience could be differentiated from other accounting employees within the petitioner's group of companies or within the petitioner's industry, how the knowledge gained abroad constituted specialized knowledge, or how the position in the United States requires the services of a person who possesses specialized or advanced knowledge of the foreign entity's operations. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner did not explain 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 may be helpful that the beneficiary has worked in a similar position within the petitioner's group of companies, the petitioner has not established that prior experience with the foreign entity is actually required in order to perform accounting, financial control and financial reporting duties for the U.S. company. Again, the beneficiary's claimed specialized knowledge must relate specifically to the petitioning company.

On appeal, counsel concedes that many of the duties to be performed by the beneficiary "are that of a typical accountant," but claims for the first time that the primary reason for the beneficiary's transfer to the United States is to implement the petitioner and parent company's "new operating procedures and systems" and to provide training in the new procedures and systems to the petitioner's existing employees. Counsel further

claims that the beneficiary gained “specialized knowledge” of the parent company’s new operating procedures and systems while working on the management team responsible for the implementation of these new procedures for his current employer, which implemented the procedures when it became a subsidiary of BIL in 2003. Counsel’s assertions are supported only by an un-signed draft letter that may or may not have been reviewed by a representative of the foreign entity, and a revised resume for the beneficiary, which has been amended to indicate that he devoted the previous twelve months to “the resourcing, implementation and training of new systems and procedures,” traveling to deliver “support and assistance to all the company hotels,” and “presenting various training sessions.”

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The petitioner in this matter was given ample opportunity to submit evidence to establish the beneficiary’s specialized knowledge qualifications. As discussed above, the petitioner’s response to the director’s request for evidence was grossly insufficient to establish that the beneficiary qualified for the benefit sought, as the petitioner failed to even assert that the beneficiary possessed specialized knowledge related to the petitioner’s interests or that the position required such specialized knowledge. The director reasonably concluded that the beneficiary had been and would be performing duties typical of any accountant or financial controller and therefore was not and would not be employed in a specialized knowledge capacity.

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

Furthermore, the evidence submitted on appeal consists primarily of counsel’s assertions, the majority of which are unsupported by evidence, or inconsistent with evidence previously submitted for the record. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The documents submitted with the initial petition and in response to the request for evidence suggest that the petitioner sought the beneficiary’s services only after attempting to fill the position by recruiting a qualified accountant from the general U.S. labor market, a fact which suggests that the petitioner was not seeking to hire an individual who could provide training on its foreign parent company’s “new” procedures. The petitioner’s initial descriptions for the position made no reference to responsibility for implementing the foreign parent company’s new procedures and providing training to the U.S. company’s employees. As discussed above, the petitioner, even in response to the director’s request for evidence, did not indicate that prior experience within the petitioner’s group was even required to perform the proposed duties, much less indicate that the position required the beneficiary’s specific experience with an international project involving the implementation of “new procedures.” Similarly, counsel provides no explanation for the revised resume submitted on behalf of the beneficiary, which includes additional duties not previously mentioned in

the beneficiary's job description or original resume. 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). Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Finally, even if the AAO did accept the proposition that the beneficiary would be responsible for implementing new procedures created by the parent company, the record contains no description or documentation of these procedures that would distinguish them as different from those currently used by the petitioner or other similar employers in the industry, all of which would reasonably be expected to utilize their own customized accounting and financial systems and procedures. There is no evidence that the beneficiary's knowledge extends beyond that of any qualified accountant. In the single instance where counsel attempts to distinguish the beneficiary as having specialized knowledge, counsel failed to submit any evidence that would allow the AAO to evaluate the claim. 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).

In sum, the AAO concurs with the petitioner's assertions that the beneficiary is highly qualified for the position offered. However, the beneficiary's knowledge and expertise, while certainly valuable to the petitioner, do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests 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 successfully demonstrated that the beneficiary is knowledgeable in accounting, financial control and financial reporting procedures in the hospitality industry. 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 primarily in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

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.