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U.S. Citizenship
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Services

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FILE: SRC 05 011 50739 Office: TEXAS SERVICE CENTER Date: **OCT 24 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, Texas 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 is engaged in the manufacture of reinforcement fibers. It seeks to temporarily employ the beneficiary as a process development engineer in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had not established that the beneficiary possessed the requisite specialized knowledge nor that the intended employment required specialized knowledge, and consequently denied the petition.

The petitioner subsequently filed an appeal. On appeal, counsel submits a brief and additional evidence, and asserts that the denial was erroneous because the director incorrectly determined that the beneficiary did not satisfy the definition of specialized knowledge. Specifically, counsel asserts that contrary to the director's findings, the beneficiary did in fact possess an unusual level of knowledge about the petitioner's products as well as an advanced level of knowledge with regard to the petitioner's processes and procedures.

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.

In a letter of support dated September 24, 2004, the petitioner stated that the parent company was one of the 100 largest industrial companies in the world. Specifically, the petitioner explained that it was the leading producer of building materials, abrasives, containers, flat glass, high performance plastics products, industrial ceramics, insulation, reinforcement, and piping. With regard to the U.S. entity, the petitioner stated that it was one of the largest reinforcement fabric manufacturers in the world.

With regard to the beneficiary, the petitioner stated that he obtained a degree in Mechanical Engineering from the University of Alberta, located in Edmonton, Alberta, Canada. In addition, the petitioner claimed that the beneficiary was well qualified for the U.S. position as a result of his three years of experience with the foreign entity. Finally, the petitioner noted that his participation in a Textile Technology Program at Mohawk College in Hamilton, Ontario, Canada in 2001 further led to his expertise in the field. With regard to his proposed duties in the United States, the petitioner stated as follows:

Specifically, the Process Development Engineer is responsible for:

- Developing products for coated fabrics market.
- Conducting scrim machine trials to quantify the effects of adjusting process levers.
- Providing engineering support to manufacturing and research and development divisions through analysis of product [defects] to determine the significance of possible causes for those defects through lab experimentation and trials and implementing proper corrective action.
- Serving as a specialist in fiberglass textile web processes, including fabric-forming machinery (weaving and laid scrim), web mechanics (electrical drive systems, controllers), coatings and curing equipment.
- Designing machine upgrades, new equipment selection, cost estimates, communicating with suppliers and commissioning equipment with time constraints.
- Designing measurement systems to monitor process conditions and test methods for level variation used in our coating process.
- Assuming responsibility for technology transfer, equipment and layout of coatings mix room for Spanish plant.
- Utilizing strong technical writing ability to communicate CAPEX materials to management and operations.

The Process Development Engineer position requires an individual with relevant technical experience related to the development of related technical fabrics products. Specifically, the

previous experience must include relevant knowledge of our coated fabrics and related products, our research and development activities, and our production processes. Because we are the most technologically advanced manufacturer of technical fabrics in the world, comparable experience with a competitor is not sufficient for this position. This type of specialized knowledge is essential to our ability to maintain our competitive edge in the market, because this individual provides support to our research and development division and other employees and teams who are all involved in developing, improving and selling our products. Someone without specialized knowledge in these areas would require several years of on-the-job training to function effectively in this position.

With regard to the beneficiary's qualifications for the proposed U.S. position, the petitioner stated:

Specifically, [the beneficiary] possesses proprietary knowledge of our coated fabrics and related products, our research and development projects and activities, and our production methods. He is a specialist in fiberglass textile web processes and has extensive knowledge of [the petitioner's] technology sufficient to impart that knowledge in a technology transfer to an overseas plant. His recognizable achievement in developing products for the coated fabrics market is expected to result in \$4 million sales and overall scrap reduction. In addition, he conducted scrim machine trials to quantify the effects of adjusting process levers, the successful results of which resulted in the recapture of two major customers.

Since September 2001, [the beneficiary] has worked in the position of Process Technology Engineer responsible for providing technical engineering support on product quality issues at our St. Catharine's facility. Beginning November 2003, he has traveled to our facility in Ridgeway, South Carolina on an intermittent basis, in TN status, to troubleshoot issues and to conduct trials with textile machinery. [The beneficiary] has performed all of the duties of the position as delineated above and established himself as a key resource within our organization for technical engineering support for industrial fabric quality control and related products.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a request for evidence was issued on October 27, 2004, which requested more detailed evidence that the beneficiary possesses specialized knowledge of the petitioner'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, and that such knowledge was not general knowledge held commonly through the industry. The petitioner responded on November 11, 2004. In response to the director's request, the petitioner provided an additional overview of its products and services, and explained that the beneficiary had a solid foundation for the position offered based on his prior work experience. Specifically, the petitioner stated that the beneficiary had at least five years experience in the engineering field, as he had began his career as a design engineer after obtaining his degree. Additionally, the petitioner provided the following clarification with regard to the manner in which the beneficiary's knowledge was specialized and advanced:

Because [the petitioner] is the most technologically-advanced manufacturer of technical fabrics in the world, experience of our advanced manufacturing processes and procedures is vital to the performance of the duties and responsibilities of the position offered. This knowledge is different from that generally held within the industry. In addition, because of the technology transfer aspect of this position, an individual with a general background in the

technical fabrics industry would not be suitable for this position because he would not have specialized knowledge of our manufacturing processes or procedures and, therefore, would not be able to assist with the technology transfer from our Canadian facility.

As state[d] above, in order to engage in process technology activities, design plans and transfer proprietary knowledge of the reinforcement process and products from our Canadian facility to the United States, [sic] the beneficiary must have specialized knowledge of the company's products and the products designs since these unique designs reflect the company's standards and requirements and those of our customers. While other companies may manufacture reinforcement fabrics, [the petitioner] is number one in the reinforcement market in Europe and number two worldwide. The company enjoys a reputation for exceptional products created through its proprietary processes. [The petitioner] has a unique customer base and provides unique products to those customers based on their specific needs and usage. This knowledge cannot be obtained from employment with other manufacturers because the customer base and specifications are unique to [the petitioner] and because the products are unique to [the petitioner] based on those requirements.

In addition, the Process Development Engineer with [the petitioner] must have specialized knowledge of the company's reinforcement fabric process and products to transfer this knowledge, technology, equipment and layout specifications to US workers. A Process Development Engineer without specialized knowledge of [the petitioner's] processes and technology would not be able to transfer that knowledge to another facility and to other workers that lack that specific knowledge or provide technical support on specific issues that involve the proprietary knowledge of the company's reinforcement products and processes. This knowledge cannot be acquired without extensive experience with [the petitioner's] products and its processes. Troubleshooting, by its very nature, implies an above-average level of knowledge of specific tasks, materials, processes so as to enable the troubleshooter to assist those with general or basic knowledge of the process or product to move beyond that basic level or to resolve specific issues of concern. To develop products for the coated fabrics market and provide engineering support to manufacturing and research and development divisions through analysis of product defects to determine the significance of the possible causes for those defects, the Process Development Engineer must have specialized knowledge of these factors as defined by the company and by our customers. Since [the petitioner's] products are proprietary and mostly protected by patents and/or trademarks and this knowledge cannot be obtained outside of the company. This knowledge can only be obtained through employment with [the petitioner] or its affiliates.

The director determined that the record neither established that the beneficiary possesses specialized knowledge nor that the intended position in the U.S. is one that requires specialized knowledge, and concluded that the beneficiary was not eligible for the classification sought. The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified engineers. The director concluded that the evidence submitted did not establish that the beneficiary's knowledge was uncommon or distinct and distinguished from other practitioners in the field, and consequently denied the petition.

On appeal, counsel for the petitioner submits a detailed brief in support of its assertions that the beneficiary possesses specialized knowledge. Counsel asserts that the petitioner pointed out numerous times the manner in which the position required specialized knowledge and the manner in which the beneficiary possessed such

knowledge, and asserts that he is highly trained and thus extremely valuable to the petitioner in the international market place. Counsel asserts that the denial should be reversed based on these contentions.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge nor that the intended position requires an employee with specialized knowledge.

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

In the present matter, the petitioner provided a lengthy but vague description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a process development engineer. Despite specific requests by the director, namely, what specifically set apart the beneficiary's knowledge from other similarly trained engineers in the field, the petitioner failed to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly relies on the same evidence prior to adjudication in support of the petition. Despite the director's finding that the initial evidence submitted was insufficient, the petitioner failed to supplement the record as requested and merely resubmitted similar statements regarding the petitioner's business and its rank in the market that had been deemed unacceptable by the director as evidence of the beneficiary's qualifications for the benefit sought. Although specifically requested by the director, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his work in the industry. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). In this case, the petitioner relies on the AAO to accept its uncorroborated assertions that the beneficiary possesses specialized knowledge, both prior to adjudication and again on appeal, based merely on the contention that the petitioning entity holds a near monopoly on the industry. While the petitioner's high rankings in the marketplace are undoubtedly impressive, they alone do not establish that the beneficiary possesses specialized knowledge simply because the petitioner is a large company that dominates a particular segment of the industry. These assertions do not constitute evidence. 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)).

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, the AAO finds them instructive. Other than deleting the former requirement that specialized

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 firm's operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility. In this matter, the petitioner continually repeats the claim that the beneficiary, as a process development engineer, must have specialized knowledge of the company's reinforcement fabric process and products to transfer this knowledge, technology, equipment and layout specifications to U.S. workers. The petitioner continues by stating that a process development engineer without specialized knowledge of the petitioner's processes and technology would not be able to transfer that knowledge to another facility and to other workers that lack that specific knowledge or provide technical support on specific issues that involve the proprietary knowledge of the company's reinforcement products and processes. The petitioner claims that this knowledge cannot be acquired without extensive experience with its products and its processes, but fails to clarify why the beneficiary's experience and training as a process development engineer differs from any of the other process development engineers employed by the petitioner. Again, the petitioner asserts that the beneficiary has specialized knowledge, yet omits any detail with regard to how this knowledge was obtained, and why his knowledge is different from other similarly trained engineers employed by the petitioner. As previously stated, 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.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New*

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.

College Dictionary 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other engineers in the field is its assertion that because it claims to be the most technologically advanced manufacturer of technical fabrics in the world, comparable experience with a competitor is not sufficient for this position. The petitioner, however, fails to provide any discussion whatsoever of the nature of the training and experience that its employees receive that is so different and unique from the training its competitors provide to their process development engineers. Additionally, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary as compared to the daily duties of other process development engineers. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees. Other than the petitioner's continuous assertions that it is number one or number two in the marketplace and thus no one else has familiarity or expertise with its processes, products and procedures, there is no independent evidence corroborating these claims. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of technical fabrics as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The claim that the beneficiary has specialized knowledge, without submitting any documentation of the training he received or the manner in which the beneficiary gained such knowledge, is insufficient. Although the petitioner generally discusses the petitioner's products or services, the lack of specific information with regard to the beneficiary and his role in these products and services precludes the AAO from clearly understanding the actual role of the beneficiary in the petitioner's organization. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

On appeal, counsel for the petitioner alleges that the denial was erroneous and submits a detailed brief in support of his contentions. Counsel restates the previously-provided synopsis of the beneficiary's duties, and addresses a service center memorandum outlining the requirements of specialized knowledge. *See* Memo. from James A. Puleo, Acting Exec. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*). Counsel focuses on the main points of the memorandum, outlining each particular basis for the possession of specialized knowledge, and thus concludes that the beneficiary satisfies each one. Once again, the simple rebuttal to these contentions rests upon the fact that the petitioner has failed to provide any independent or objective evidence which shows that the beneficiary's knowledge of the petitioner's products or processes is so unique or advanced that it differs significantly from other similarly trained engineers in the

industry. On appeal, counsel contends that the letters from the petitioner, dated September 24, 2004 and November 11, 2004, clearly highlight these qualifications. The AAO disagrees, and agrees with the director's determination that the evidence in the record is simply insufficient to establish that the beneficiary possesses specialized knowledge. Although counsel alleges on appeal, for example, that as a result of the beneficiary's special knowledge not generally found in the marketplace, he is qualified to contribute to the petitioner's knowledge of foreign operating conditions, and that he has been utilized in such a capacity that his assignments have enhanced the petitioner's competitiveness and financial position, no independent evidence to corroborate these claims has been submitted. 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).

Counsel and the petitioner overlook the fact that the beneficiary is undoubtedly one of many process development engineers in the workforce today. It is fair to conclude that most people employed in this line of work must also have an understanding of the specific industry in which the petitioner is engaged. The petitioner seems to focus on this aspect of the beneficiary's background as the key element of the beneficiary's qualifications. The petitioner does not, however, offer any evidence that the beneficiary has uncommon, advanced, or proprietary knowledge of the petitioner's unique processes or procedures.² Instead, the argument is that the beneficiary's knowledge of the petitioner's products and processes through his employment with the foreign entity gives him specialized knowledge.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. No. 91-851 stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge but that, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given

² Although the fact that a beneficiary has experience with a proprietary product or procedure does not serve as prima facie evidence that the beneficiary possesses specialized knowledge, when such a claim is made, Citizenship and Immigration Services (CIS) must carefully evaluate the claimed knowledge and the depth of the beneficiary's experience in order to determine whether it rises to the level of specialized knowledge as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(D). Thus, while a beneficiary is no longer required to have specialized knowledge, such knowledge can still be a basis for this determination.

specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.").

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record contains insufficient evidence to establish that the beneficiary has at least one continuous year of full time employment abroad with the foreign entity within the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). The petition in this matter was filed on October 15, 2004. As a result, the pertinent period for purposes of this analysis is from October 15, 2001 to October 15, 2004.

On the L Supplement to Form I-129, the petitioner asserts that the beneficiary has been employed with the Canadian entity as a process engineer since September 2001. The petitioner further claims that beginning in November of 2003, the beneficiary made intermittent trips to the United States to render his services to the petitioner's U.S. offices. Other than the beneficiary's resume, however, the petitioner has failed to provide any documentary evidence establishing that the beneficiary was in fact employed by the Canadian entity during the relevant time period. Merely claiming that the beneficiary was employed abroad since September 2001, without documentary evidence such as paystubs or tax forms, is insufficient to satisfy this requirement. 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)). In addition, 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). For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.