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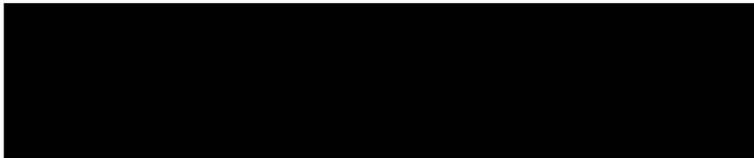
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IN RE: Petitioner:  
Beneficiary:



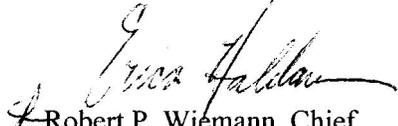
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee 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 states that it is engaged in the overhaul and repair of engines for oil and gas energy markets. The petitioner, a Venezuelan corporation, claims to be the parent company of the beneficiary's prospective employer, Bixray, Inc., a Florida corporation. The petitioner seeks to employ the beneficiary as the general manager of its Florida subsidiary for a period of three years to open a new office in the United States.

The director denied the petition on December 9, 2005, concluding that the record contains insufficient evidence to demonstrate: (1) that sufficient funding or capitalization was provided to the U.S. entity from the foreign entity; (2) that sufficient physical premises to house the new office have been secured; and, (3) that the beneficiary will be employed in the United States in a specialized knowledge capacity, or that the beneficiary possesses specialized knowledge.

On the Form I-290B, Notice of Appeal, counsel for the petitioner asserts that the petitioner submitted evidence to show funding of the U.S. entity in the amount of \$287,962.28. Counsel for the petitioner asserts that the petitioner is in the "process of securing evidence from Venezuela of the source of the funds." In addition, counsel for the petitioner asserts that there was an error in the initial lease agreement submitted by the petitioner which indicated that the leased space was for residential purposes only. The petitioner submits a new lease agreement. Finally, counsel asserts that the beneficiary has over twenty years of experience in the area of "electrical engineering and purchase and distribution of Rolls Royce engines (RollsWood Joint Venture) to Venezuela's oil industry," and thus the beneficiary possesses specialized knowledge.

The petitioner did not submit a separate brief or documentation in support of the appeal. Counsel indicated on Form I-290B that he would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on December 13, 2006, to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents, along with evidence of the date it was originally filed with the AAO. Counsel for the petitioner forwarded a brief in support of the appeal on December 19, 2006, however, counsel did not present any evidence to document the date the brief was originally filed. The letter to the petitioner's counsel sent from the AAO on December 13, 2006, stated the following:

The regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. Therefore, this facsimile is not and should not be construed as requesting or permitting the petitioner and/or its counsel to submit a late brief and/or evidence in response to this request.

Since counsel for the petitioner failed to provide documentation evidencing the date the appeal brief was originally filed, the AAO will not consider the brief to be timely filed. The appeal will be adjudicated based on the record of proceeding before the director, and counsel's statements on Form I-290B.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(vi) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The first issue in this matter is whether the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The petition was filed on July 29, 2005. In support of the petition, the petitioner submitted a letter from MetLife Financial Services, dated July 22, 2005, stating that the United States entity has a "crescendo account" with MetLife Securities in the amount of \$268,182.49.

On August 24, 2005, the director requested additional evidence of the funding or capitalization of the United States company, such as copies of wire transfers showing transfers of funds for the foreign organization or other evidence of financial resources committed by the foreign company. In response, the petitioner re-submitted the letter from MetLife Financial Services. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. 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).

The director denied the petition on December 9, 2005, concluding that the petitioner did not provide sufficient evidence to determine if the foreign entity invested in the United States entity and if the funding or capitalization of the United States company has been secured to commence doing business in the United States. The director noted that the petitioner submitted a letter from MetLife Securities and re-submitted the same letter when the director requested additional evidence for the funding of the United States company.

On appeal, counsel for the petitioner asserts that sufficient evidence was submitted to evidence the funding of the U.S. entity showing a total of \$287,962.28 in the name of the U.S. company. In addition, counsel indicates that the director did not previously request evidence of the source of the funds. In addition, counsel asserts that the "petitioner is in the process of securing evidence from Venezuela of the source of the funds." Although counsel states that additional documentation would follow, the record has not been supplemented.

The petitioner did not submit any documentation to evidence that the funds for the crescendo account originated from the foreign company or the beneficiary, as the sole owner of the foreign company. The petitioner fails to submit documentation of funding from the foreign company such as evidence of wire transfers from the foreign company into the U.S. entity's company bank account, cancelled checks, or deposit receipts. 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)). Thus, the documentation submitted by the petitioner is insufficient to establish that the foreign company provided funding to the U.S. entity. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured a sufficient financial investment from the foreign company.

Furthermore, the petitioner has not submitted a business plan or other documentation to establish the U.S. company's anticipated start-up expenses and it is therefore not possible to determine what investment amount would be sufficient. Therefore, even assuming, *arguendo*, that the crescendo account was intended to be used as capitalization for the new U.S. company, the AAO could not conclude that this amount is adequate for the U.S. company to commence doing business in the United States. For the foregoing reasons, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has secured sufficient physical premises to house the new office in the United States as required by the regulations at 8 C.F.R. § 214.2(l)(3)(vi)(A).

At the time of filing the original petition, the petitioner submitted a lease agreement between Lonson LLC and the United States entity, signed on June 5, 2005. However, the terms of the lease agreement indicated that the premises were to be used for residential purposes only. The director did not address this issue in the request for evidence issued on August 25, 2005. The director denied the petition on December 9, 2005, concluding that the petitioner has not provided sufficient evidence to determine that the petitioner has secured sufficient physical space for the new office since the lease agreement states that the tenant may only use the leased space for residential purposes.

On appeal, counsel for the petitioner states that the "landlord has recognized such error" and a new lease agreement was submitted. The new lease agreement is dated June 1, 2005 and is made between the U.S. entity and the landlord, Office Professional Plaza, LLC. The terms of the lease, including the office address and the landlord, are completely different from the lease originally submitted. The petitioner has not explained why this lease was not originally submitted with the petition since it was signed on June 1, 2005 prior to filing the instant petition. In addition, it is unclear why the petitioner would have two separate lease agreements for the U.S. entity, both signed in June 2005. In addition, the address identified on the Form I-129 as the beneficiary's proposed worksite does not appear on either lease agreement and it appears to be the beneficiary's residential address. 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. 582, 591 (BIA 1988)**. Furthermore, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Moreover, the petitioner has not described its anticipated space requirements for the new business, and the lease in question does not specify the amount or type of space secured. Based on the insufficiency of the information furnished, and the unexplained existence of two lease agreements, it cannot be concluded that the petitioner had secured sufficient space to house the new office as of the date of filing. For this additional reason, the appeal will be dismissed.

The third issue in 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 a letter dated August 11, 2005, submitted with the petition, counsel for the petitioner described the beneficiary's proposed duties as general manager for the U.S. company as the following:

[The beneficiary] will develop company policies with regards to deal structuring, business valuations and potential business expansion in the U.S.

He will make determinations regarding the hiring of lower echelon management and contractors, negotiate investments, accounts and lines of credit and other business deals.

He will maintain business relationships with the manufacturing company in the U.K., and will exercise sole discretion and authority with major clients.

He will identify and develop strategic commitments with other global clients to explore other future development business opportunities. [The beneficiary] using his long-term experience as an Electrical Engineer and executive will lead international outsourcing activities and will establish budgetary goals.

On August 24, 2005, the director issued a notice requesting additional evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director also requested evidence to establish that the beneficiary's knowledge of the processes and procedures of the petitioner is apart from the elementary or basic knowledge possessed by others. The director noted that the evidence must support that the beneficiary has an advanced level of knowledge of the processes and procedures of the company and is distinguished from those with only elementary or basic knowledge.

Specifically, the director requested: (1) a detailed description of the specialized knowledge held by the beneficiary; (2) a description of how the beneficiary obtained this knowledge such as coursework in college, training provided by the petitioner, etc.; (3) an explanation as to how the specialized knowledge relates to the company's product, service, equipment, techniques, management or other interests; (4) an explanation as to whether the beneficiary has an advanced knowledge of the processes and procedures of the company; and (5) an explanation as to how this knowledge is applied in international markets.

In response, counsel for the petitioner submitted a letter, dated November 23, 2005, responding to the director's request. In response to the director's request, counsel for the petitioner stated the following:

- a. [The beneficiary] has represented Rolls Wood Group (RWG) since 1986 and since he's had exclusive representation in Venezuela in the area of Rolls Royce gas turbines for models RB211 and Avon.
- b. Throughout almost twenty (20) years in the field [the beneficiary] has developed an extremely close and trustworthy relationship between the [foreign company] and RWG which has allowed [the foreign company] to carry on negotiations on behalf of RWK to the benefit of both enterprises.

- c. Due to the political situation in Venezuela it is of utmost importance to be able to count on a company which operates outside of Venezuela, in this case, [the U.S. entity] based in the USA in order to maintain the existing relationship between [the beneficiary] and RWG and be able to continue servicing the principal client, P.D.V.S.A.

On December 9, 2005, the director denied the petition concluding that the petitioner did not establish that the position of general manager requires an employee with specialized knowledge, or that the beneficiary has such knowledge. The director noted that the petitioner provided a very general job description for the beneficiary's position and thus it is unclear how the proposed duties require specialized knowledge and it is unclear as to what kind of specialized knowledge the petitioner claimed the beneficiary had. In addition, the director noted that the beneficiary's duties do not appear to be significantly different from those of any other general managers employed by the petitioner, or different from the duties performed by other general managers in the same field.

On appeal, counsel for the petitioner asserts the following:

The adjudications officer's decision in denying the petitioner for lack of showing specialized knowledge on the part of the beneficiary ignores the 20 years experience possessed by the beneficiary in the area of electrical engineering and purchase and distribution of Rolls Royce engines (RollsWood Joint Venture) to Venezuela's oil industry make beneficiary specially suitable for the position of general manager in the US subsidiary, [the U.S. entity].

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed abroad in a specialized knowledge position 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 job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

Although the petitioner asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated sufficient basis to support this claim. The petitioner has provided a description of the beneficiary's proposed responsibilities as a general manager for the U.S. company, however, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other managers employed by the petitioner or employed in a similar industry at large. Going on record without 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. Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Furthermore, the petitioner repeatedly asserts that the beneficiary possesses specialized knowledge due to over twenty years of experience in the area of "electrical engineering and purchase and distribution of Rolls Royce Engines to Venezuela's oil industry." According to the Form I-129, the beneficiary was employed by the foreign company since 1981. Although the beneficiary has many years of experience with the foreign company, the petitioner has not submitted sufficient evidence to indicate that this experience rises to the level

of specialized knowledge, and instead may be experience that is similar to any employee who has worked in a similar role in the industry for several years.

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). 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 products or service, management operations, or decision-making process. See *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).<sup>1</sup> As stated by the Commissioner in *Matter of Penner*, 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." 18 I&N Dec. at 52. 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.

Here, the beneficiary's proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. For example, the beneficiary's responsibilities of developing the "company policies with regards to deal structuring, business valuations and potential business expansion in the U.S.;" and maintaining "business relationships with the manufacturing company in the U.K., and exercise sole discretion and authority with major clients;" and identifying and developing "strategic commitments with other global clients to explore other future development business opportunities." 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. The petitioner's unsupported assertion that the beneficiary

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<sup>1</sup> Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.* not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

possesses specialized knowledge of the purchase and distribution of Rolls Royce engines in the Venezuela oil industry, without more, is insufficient to establish that the position of general manager requires an employee with specialized knowledge specific to the petitioner's company. The petitioner has not defined the referenced "policies and goals", or "procedures," nor has it explained why knowledge of the "Rolls Royce engines" would be required to manage the U.S. entity. 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 AAO acknowledges that it is possible for an individual employed in a managerial or executive role to meet the criteria for specialized knowledge capacity set forth at section 214(c)(2)(B) of the Act. However, the petitioner has not established that the particular position offered to the beneficiary requires an individual with knowledge, experience or characteristics beyond possession of good business sense, management skills, a background in engineering, and a network of existing business contacts. The petitioner does not manufacture a product or provide a service, nor does it market or sell its parent company's products or services. The beneficiary is needed to oversee the development of the business in the United States and to market and distribute a type of engine, a product not manufactured by the U.S. entity. The beneficiary apparently has sufficient knowledge of these products to educate existing and potential customers regarding product features in order to complete sales transactions. However, knowledge of products manufactured by other, unrelated companies cannot constitute specialized knowledge of the petitioner's interest. There is no evidence that the beneficiary would rely on "special" or "advanced" knowledge of the petitioner's products or processes in order to perform the described duties. The beneficiary's claimed specialized knowledge must relate specifically to the petitioning company.

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 *I756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. 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.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). 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.” *Matter of Penner, id.* At 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

The legislative history of 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. v. Attorney General, supra* at 16. Based on the evidence presented, the director properly concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this additional reason the appeal will be dismissed.

Furthermore, beyond the decision of the director, the petition indicates that the beneficiary owns 600 shares of the foreign entity, and thereby of the United States company. Since the U.S. company is only authorized to issue 1000 shares, it appears that the beneficiary is a major stockholder of the U.S. company. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this matter, the petitioner has not furnished evidence that the beneficiary's services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. For this additional reason, the petition cannot be approved.

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 the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.