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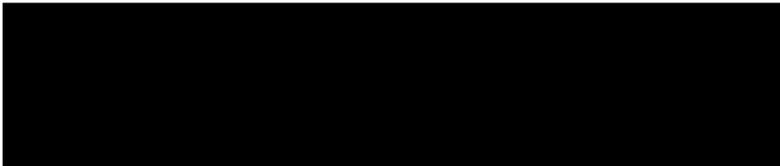
FILE: SRC 04 176 50097 Office: TEXAS SERVICE CENTER Date: **JUL 06 2007**

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

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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 extend the employment of its sales and marketing assistant as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Georgia corporation, states that it is engaged in the sale of motorcycle racing tires. It claims to be an affiliate of Continental AG, located in Hannover, Germany. The beneficiary was previously granted L-1B status for a three-year period and the petitioner now seeks to extend her stay for three additional years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge. The director observed that, based on the evidence submitted, the beneficiary does not possess knowledge that is specialized or advanced compared to that generally found in the petitioner's industry. The director noted that the petitioner did not establish that the beneficiary has knowledge related to the petitioning company's interests, or that she otherwise possesses knowledge that is noteworthy or uncommon.

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 asserts that the director "improperly applied the regulatory language for L-1 classification and made unfounded assumptions regarding the Beneficiary's qualifications." Counsel submits a brief in support of the appeal.

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

The regulation at 8 C.F.R. § 214.2(l)(3) 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.

The nonimmigrant petition was filed on June 10, 2004. The petitioner indicated on Form I-129 that the beneficiary would continue to be employed as the petitioner's sales and marketing assistant, responsible for "sales & marketing." The petitioner's letter dated June 7, 2004 consisted of the following statement:

I . . . would like [the beneficiary] to continue working for [the petitioner]. She has done great work over the past couple of years. Her knowledge and experience is useful to the company."

In a request for additional evidence dated September 7, 2004, the director provided the petitioner with the regulatory definition of "specialized knowledge," and advised the petitioner that the L-1B visa classification is not intended for all employees with any level of specialized knowledge. The director noted that the purpose of the L-1B category is to facilitate the admission of key personnel to the United States, and, as such, mere familiarity with a company's product or services does not constitute specialized knowledge. The director also referenced a definition of specialized knowledge referenced in a March 9, 2004 legacy Immigration and Naturalization Service (INS) memorandum, noting that "an alien would possess specialized knowledge if it was shown that the knowledge is different and advanced from that generally held within the industry." See Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994).

The director requested that the petitioner provide evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Specifically, the director instructed the petitioner to: (1) explain how the beneficiary's knowledge is different from other workers within the petitioning organization and within the petitioner's group; (2) provide an explanation as to the training and/or processes involved in preparing an individual for the offered position; and (3) any other documentation that will present an accurate description of the company's products.

In response, the petitioner submitted a letter dated November 24, 2004, in which the petitioner explains the beneficiary's specialized knowledge as follows:

We sell Continental brand motorcycle racing tires. The Continental R&D division is located in Korbach, Germany. Their motorcycle racing division engineers are German, Polish and several compounding chemist Czech [sic]. [The beneficiary] not only speaks these languages but can communicate in technical terms with regarding to rubber and compounding. [The beneficiary] has spent a great deal of time going to over a hundred AMA Grand National races. Her knowledge of the riders, pit crew and team owners is unique. The competition is here in the USA. The tires are produced in Europe. This combination is difficult and transaction was impossible before [the beneficiary]. When a racer is trying to communicate how the tires are performing he will often use words and phrases like "the tires are greesy [sic]" or "edgey" [sic] or "they are killing me on braking." To communicate information on how a tire feels to them (the rider) and how the motorcycle handles to a European engineer is what makes [the beneficiary's] knowledge of racing and then her language skills so very unique.

It is [the petitioner's] intent to prove to Continental Tire that we are willing to invest in a unique person like [the beneficiary] so that we can not only sell motorcycle racing tires but hopefully distribute other types of Continental competition tires in the future (kart, truck, bicycle). [The beneficiary] is not only necessary for our business today, she will be critical for future growth. . . . It would be almost impossible to replace her.

The petitioner also submitted a letter from the national sales manager of Continental Tires North America, Inc., who explained that his company and Continental AG are suppliers of the petitioning company, and further attempted to explain the beneficiary's claimed specialized knowledge as follows:

[The petitioner] specializes in motorcycle racing tires. They have direct contact with our R&D department in Korbach Germany. They provide a valuable service in that their manager [the beneficiary] is able to communicate directly with several Eastern European engineers in their native language both Chech [sic] and Polish and German. When producing a racing tire it's difficult to communicate (FEEL) therefore her employment is very necessary for our team with regard to information flow. We consider [the petitioner] and [the beneficiary] much more than just a customer as they provide extremely valuable information with rubber compounding and new patterns.

The director denied the petition on December 28, 2004, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge. The director acknowledged the petitioner's claims but concluded that the claimed knowledge related to European languages, technical terminology, and familiarity with riders, pit crew and team owners does not meet the requirements set forth for L-1B classification.

On appeal, counsel for the petitioner asserts that the director improperly applied the regulatory language and made unfounded assumptions regarding the beneficiary's qualifications. Counsel references the director's reference to "key personnel" in the request for evidence, and states that the director's stance that the petitioner must demonstrate both specialized knowledge and status as "key personnel" is incorrect. Counsel asserts that

the "key personnel" requirement disregards the definition of specialized knowledge enacted by the Immigration Act of 1990, and is inconsistent with USCIS policy as set forth in the Puleo memorandum, which states that knowledge need not be narrowly held throughout the company to be considered advanced.

Counsel further asserts that the director should rely on the current, more liberal definition of specialized knowledge, including the regulatory definition and the Puleo memorandum, which supercede pre-1990 interpretations of the term. Counsel asserts that the director's reference to "key personnel" is evidence that the director applied an incorrect standard.

Counsel further asserts that the director provided no support for her conclusions regarding the beneficiary's eligibility, and contends that "the record contains demonstrable evidence that the Beneficiary is uniquely qualified for the position of Sales and Marketing Assistant." Finally, counsel contends that the director erroneously compared the beneficiary's knowledge to that generally found within the petitioner's industry, rather than limiting her analysis to how the beneficiary's knowledge relates to the petitioning organization.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that she will be employed by the U.S. entity in a position requiring specialized knowledge.

As a preliminary point, regarding the petitioner's claim of specialized knowledge, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that U.S. Citizenship and Immigration Services (USCIS) is bound to base its decision on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist USCIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(i)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish that it involves specialized knowledge. *Id.*

As counsel's arguments on appeal are based largely on the issue of what is the appropriate legal standard for determining specialized knowledge, the AAO will first consider such standards. It is 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 *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm.

¹ Counsel asserts that pre-1990 precedent decisions interpreting specialized knowledge are no longer relevant. However, 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

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.

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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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, supra* 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 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 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 cannot 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

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, including *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”) Thus, based on the intent of Congress in its creation of the of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee classification. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

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. Rp. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term “key personnel” denotes a position within the petitioning company that is “of crucial importance.” *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered “important” to a petitioner’s enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational 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.

Counsel argues that the 1994 Puleo memorandum represents current USCIS policy on specialized knowledge. The Puleo memo allows USCIS to compare the beneficiary’s knowledge to the general United States labor market in order to distinguish between specialized and general knowledge. The Acting Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Puleo memo, *supra*. A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. *Id.* The analysis for specialized knowledge therefore requires a review of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary’s job duties.

Although the Immigration Act of 1990 provided a statutory definition of the term “specialized knowledge,” Congress did not give any indication that it intended to expand the field of aliens that qualify as possessing specialized knowledge. Although the statute omitted the term “proprietary knowledge” that was contained in the regulations, the statutory definition still calls for “special knowledge” or an “advanced level of knowledge,” similar to the original regulation. Neither the 1990 House Report nor the amendments to the statute indicate that Congress intended to expand the visa category beyond the “key personnel” that were originally mentioned in the 1970 House Report. Considered in light of the original 1970 statute and the 1990 amendments, it is clear that Congress intended for the class of nonimmigrant L-1 aliens to be narrowly drawn

and carefully regulated, and to this end provided a specific statutory definition of the term "specialized knowledge" through the Immigration Act of 1990.

Contrary to counsel's assertions, the Puleo memorandum, although issued after the 1990 amendment, does not differ significantly from previous CIS guidance on this issue, other than removing the requirement that a beneficiary's specialized knowledge be proprietary or unique. For example, the memorandum indicates that one possible characteristic of an employee who possesses specialized knowledge is that the individual "has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position." Puleo memo, *supra*. While the language differs from previous interpretations, this criterion is another way of stating that the petitioner may establish a beneficiary's specialized knowledge credentials by submitting evidence that the beneficiary is a "key employee." Regardless, the director did not ultimately deny the petition based on the petitioner's failure to establish that the beneficiary would qualify as "key personnel."

In this matter, the petitioner has failed to provide a consistent, comprehensive description of the beneficiary's duties sufficient to establish that the beneficiary possesses the claimed specialized knowledge, or that the beneficiary requires such knowledge to perform her duties. The petitioner initially indicated that the beneficiary would be employed as the sales and marketing assistant of the petitioner's two-person company, with responsibility for "sales and marketing." In response to the director's request for additional evidence, the petitioner's supplier, Continental Tires, refers to the beneficiary as the petitioner's "manager." Further, both the petitioner and its supplier suggest that the beneficiary is employed for her ability to translate the feedback of U.S. motorcycle racers to several European languages, and therefore assist the German supplier's engineers with research and development efforts. The petitioner provides no explanation regarding the discrepant job titles or functions, nor any indication as to how the beneficiary's role as a translator relates to her role as a sales and marketing employee. 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).

As a result of the above-referenced inconsistencies, although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not clearly articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting two disparate, extremely generalized descriptions of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Contrary to counsel's assertions to the contrary, the record contains no "demonstrable evidence" of the beneficiary's qualifications for this visa classification. None of the claims submitted by the petitioner or counsel are supported by documentary 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)). 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).

Furthermore, even if the petitioner had provided documentary evidence in support of its assertions, the claimed specialized knowledge does not meet the statutory or regulatory definitions as the knowledge does not relate specifically to the petitioning organization. For example, the beneficiary is claimed to have specialized knowledge because she is able to translate the feedback on the performance of German-manufactured tires from U.S. racers to the petitioner's German supplier in three different European languages. However, the beneficiary's ability to speak several languages, while valuable to the petitioner, does not establish her specialized knowledge of the petitioner's products, services, processes or other interests. The petitioner does not produce a product but is merely one U.S. distributor of the foreign entity's motorcycle racing tires.

The petitioner further suggests that the beneficiary's specialized knowledge is derived from a combination of her language skills, her "knowledge of racing," gained by attending over 100 AMA Grand National races, and her "unique" knowledge of the riders, pit crews and team owners. Again, the beneficiary's familiarity with the sport of motorcycle racing and its individual participants does not relate specifically to the petitioning company. Regardless, the petitioner did not attempt to describe the beneficiary's claimed racing knowledge with any specificity, or describe how the knowledge relates to her job duties as a sales and marketing assistant. 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 fact that she attended a large number of motorcycle races is insufficient to establish that the beneficiary's knowledge should be considered specialized compared to other similarly employed workers in the industry, or working for the petitioning company, and falls significantly short of supporting the petitioner's claim that the beneficiary's knowledge is "unique."

Overall, the petitioner and counsel imply that merely attending many motorcycle races and being able to speak Polish, German, and Czech is sufficient to bestow "special knowledge" or an "advanced level of knowledge." While it may be correct to say that the beneficiary is a productive and valuable employee whose language skills are unique within the two-person U.S. company, this fact alone is not enough to establish specialized knowledge. Similarly, while the beneficiary's skills and knowledge may contribute to the success of the petitioning organization by improving its chances for further distributorship agreements with its German supplier, this factor, by itself, does not constitute the possession of specialized knowledge. The beneficiary's contribution to the economic success of the petitioning company may be considered, but the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's processes 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).

Thus, as the petitioner has not established that the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, or established that the position of sales and marketing assistant requires specialized knowledge, the director rationally determined that the beneficiary does not qualify as a specialized knowledge worker.

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. v. Attorney General*, 745 F. Supp. at 16. Based on the foregoing, the record does not establish that the beneficiary possesses specialized knowledge, or that she would be employed by the U.S. entity in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

On the Form I-129, the petitioner stated that it is an affiliate of Continental AG, located in Hannover, Germany. Where asked to describe the stock ownership and control of each company, the petitioner cryptically stated: "Corporation 100% ownership." As the petition was submitted without supporting evidence, the director requested copies of the articles of incorporation and stock certificates for both companies to establish their ownership and control, as well as evidence that both companies continue to do business.

The evidence submitted in response, including the above-referenced letters from the petitioner and from Continental Tires North America, Inc., indicates that the petitioner is a customer of Continental, not an affiliate as initially claimed by the petitioner. Rather, the petitioner acts as a U.S. distributor of tires supplied by Continental. As there is no evidence of common ownership and control between the two companies, it must be concluded that there is no qualifying relationship. Further, the AAO notes that according to Georgia State corporate records, the petitioning company was voluntarily dissolved and wound up its operations as of July 18, 2006. *See* <http://corp.sos.state.ga.us/corp>. While this dissolution occurred subsequent to the filing of the petition, the minimal evidence submitted in response to the request for evidence failed to establish that the U.S. company was a qualifying organization doing business in the U.S. as defined in the regulations. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). For these additional reasons, the petition cannot be approved.

Finally, as it appears that no qualifying relationship has ever existed between the petitioner and the claimed overseas affiliate, the record does not establish that the beneficiary was employed by a qualifying organization abroad prior to her admission to the United States as a nonimmigrant, as 8 C.F.R. § 214.2(l)(3)(iii). For this additional reason, the petition cannot be approved.

The AAO acknowledges that CIS previously approved an L-1B nonimmigrant petition filed on the beneficiary's behalf. The prior approval does not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions and clear evidence of ineligibility that are contained in the current record, the approval would constitute material and gross error on the part of the director. Based on the lack of required evidence of eligibility in

the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.