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U.S. Citizenship
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Services

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FILE: SRC 05 261 51845 Office: TEXAS SERVICE CENTER Date: **MAY 01 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: SELF-REPRESENTED

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 appears to be an Indian corporation registered to do business in the State of Oklahoma and claims to be engaged in the business of information processing, manufacturing, sales and service. It seeks to temporarily employ the beneficiary as an application programmer at its claimed parent company's offices in Tulsa, Oklahoma 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 or that the intended employment required specialized knowledge, and subsequently denied the petition.

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, the petitioner asserts that as a result of his experience in the information technology industry, both inside and outside the foreign entity, the beneficiary has gained the critical knowledge necessary to perform the duties of the proffered position. In support of this contention, the petitioner resubmits the previously-submitted evidence and offers additional details regarding the beneficiary's position and qualifications.

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 dated September 26, 2005, the petitioner explained that the purpose of the beneficiary's transfer to the United States was to employ him as an application programmer to help perform a major upgrade of the ABAP applications for the SAP project for the petitioner's client, British Petroleum (BP). The petitioner further explained that the purpose of the petitioner's on-site team in Oklahoma, of which the beneficiary would be a part, was:

[T]o design and develop applications for the SAP project; implement and test applications for the project; install, troubleshoot, and operate the application system; migrate data from previously used applications to new ones; perform emergency fixes and repetitive maintenance; and design and develop applications for the SAP project.

With regard to the beneficiary, the petitioner stated that he joined the Indian branch of the company in September 2003 as an application programmer on ABAP application development projects for the SAP project. It further stated that the beneficiary obtained a Bachelor's Degree in civil engineering from the University of Kerala in 1991 and a Master's Degree in civil engineering from Maharaja Sayajirao University in 1996. The petitioner also explained that prior to his tenure with the foreign entity, the beneficiary was employed as an ABAP consultant/software engineer and as a development consultant with two other employers. With regard to his proposed duties in the United States, the petitioner stated:

As an critical member of the U.S. team, [the beneficiary] will be leading a major upgrade of the ABAP applications for the SAP project. In addition to the duties that [the beneficiary] has been performing in India . . . he will expand his duties to include coordinating the upgrade of ABAP applications for the SAP project, interfacing with the U.S. team regarding the technical customizations of the applications, and leading the U.S. and India teams to ensure the successful deployment of new and updated applications for the project. After the new upgraded ABAP applications have been deployed, [the beneficiary] will remain in the United States to oversee the resolution of any technical issues relating to the applications.

The Application Programmer position requires three years of experience in the field and specialized knowledge, training, and experience in: IT technologies such as SAP, ABAP, and Java; team leadership; [the foreign entity] and [the U.S. entity's] business systems and practices in both the United States and India; [the foreign entity] and [the U.S. entity's] in-house development of the SAP project; the client's proprietary and internal-use-only systems and technologies, its specific mix and customizations of technologies, its corporate

environment, and its interactions with [the U.S. entity]; and [the U.S. entity's] proprietary and internal-use-only business systems such as QMS and SDMS.

The petitioner continued by providing detailed descriptions of the methodologies and processes described above.

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 detailed request for evidence was issued on October 31, 2005, which requested more detailed evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Additionally, the director requested evidence that the beneficiary's knowledge of the processes and procedures of the company is apart from basic or elementary knowledge possessed by others in the company. Finally, the director requested information with regard to the beneficiary's training, specifically focusing on the petitioner's claim that the beneficiary had completed two in-house SAP training sessions. Additionally, the director requested an explanation as to why the beneficiary's knowledge was so uniquely different from other similarly trained persons in the industry.

The petitioner responded on December 9, 2005. In response to the director's request, the petitioner provided a lengthy but vague restatement of the beneficiary's duties, qualifications, and involvement with the previously-identified systems, emphasizing that the beneficiary's two years of employment with the foreign entity and his work on the project since its inception largely contributed to his superior qualifications. With regard to the director's query about other similarly-trained employees in the company, the petitioner provided a comparison chart of the team members, and noted that although there were eighteen other individuals in addition to the beneficiary who had similar backgrounds and training on the team, none of these individuals possessed experience on the BP SAP project.

With regard to the beneficiary's training, the petitioner indicated that the beneficiary is set apart from other similarly-qualified persons by an uncommon, noteworthy, and distinguished quality as a result of the unique combination of training and experience that he possesses. The petitioner continues by stating that there was no particular date on which the beneficiary "became specialized." Instead, the petitioner states that through his six years of experience in the IT industry, his over two years of experience with the foreign entity on this particular project, and through professional classroom training and extensive practical experience in SAP, ABAP, and Java, and the proprietary and internal-use-only processes of the petitioner and [REDACTED], the beneficiary gained specialized knowledge. The petitioner also provided a list of training the beneficiary received on BP interfaces and processes from September 2003 through October 2005. The petitioner confirmed that his two SAP training sessions occurred after the filing of the instant petition, namely, from August 29, 2005 to September 2, 2005, and October 24, 2005 to October 28, 2005.

The director determined that the record failed to establish that the beneficiary possesses specialized knowledge. 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 persons, or that the beneficiary's knowledge gained as a result thereof was uncommon or noteworthy in comparison. The director specifically noted that the most relevant part of his training pertaining to the SAP project did not take place until after the instant petition was filed, thereby raising the question of whether the beneficiary in fact possessed the requisite knowledge claimed by the petitioner. On appeal, the petitioner contends that the director's decision was erroneous and that he failed to consider all of the applicable rules and regulations pertaining to the petition.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses 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 office, his intended employment in the U.S. office, and his responsibilities as an application programmer. Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained programmers 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. Despite the petitioner's detailed discussion of the SAP project that the beneficiary has worked on and the processes that he has been trained in, 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.

For example, in response to the director's request for evidence, the petitioner submitted a list of the team members assigned to the [REDACTED]. The list states that the beneficiary has 36 months of on-the-job and general experience. The petitioner argues that when compared to the other employees on the list, most of whom have between 1 to 18 months of experience and some of whom are marked with the notation "n/a," the beneficiary is clearly the most qualified and thus possesses specialized knowledge. The AAO disagrees.

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 with the petitioner abroad, and that this knowledge was uncommon and distinctive from the knowledge and training of his colleagues. While the petitioner provided a list of various processes in which the beneficiary was trained, no documentation was submitted that distinguishes the petitioner from other information technology companies who may also render services to BP, and neither did the petitioner submit any evidence of what other programmers under its employ do on a daily basis. It seems unlikely that the beneficiary is the only programmer or one of only a select few that is capable of working on the SAP project, or that the beneficiary handled it solely by himself.

Although the petitioner asserts on appeal that the original petition and response to the request for evidence both provided sufficient evidence to establish the beneficiary's qualifications for the benefit sought, the fact remains that there is no other evidence to compare it against in terms of the qualifications of other programmers in the industry and/or those employed by the petitioner. 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, both prior to adjudication and again on appeal, that the beneficiary possesses specialized knowledge. However, 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 *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 an educated and/or 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. The petitioner acknowledged that it provided the beneficiary's training in August, September and October of 2005 in two five-day sessions. Based on the filing date of the petition, it appears that the beneficiary only received one of these training sessions prior to the filing of the petition, and did not complete the second phase until after the petition was filed. Clearly, this raises questions with regard to the manner in which the beneficiary gained the claimed specialized knowledge of SAP if half of his formal training did not take place until after the petition was filed.

No specific details and no documentation explaining the nature and extent of the beneficiary's training was provided. While a list of the beneficiary's training sessions from 2003 through 2005 is submitted, the list fails to elaborate on how his participation in such sessions resulted in specialized knowledge. More importantly, the petitioner asserts that the main requirement for the position in the U.S. is that the programmer have three years of experience in technologies such as SAP, but claims that the prior to the filing of the petition, the beneficiary received only one five-day training session in SAP, from August 29, 2005 to September 2, 2005. What remains unclear is why the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that his colleagues appear to have had the opportunity to attend the same training sessions. It is not unreasonable, therefore, to conclude that other similarly trained programmers have

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

achieved or would achieve the same level of knowledge as the beneficiary by simply completing the same training, particularly the five-day training sessions in the SAP technology.

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 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 assertion that the beneficiary's knowledge is more advanced than other programmers in the field is based on the beneficiary's experience, specifically his two years working for the petitioner and his total of six years of experience in the IT industry. Again, 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 its other programmers, both working for the petitioner and in the industry in general. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees. Moreover, there is no independent evidence corroborating the claims of the petitioner. There is no evidence in the record to suggest that a similarly-educated person with six years of experience in the IT industry and a five-day training session in the SAP technology could not perform the position offered to the beneficiary. This lack of tangible evidence makes it impossible to classify the beneficiary's knowledge of the petitioner's processes, and more specifically the SAP project, as specialized 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 remains unsupported due to the failure to submit any documentation that the training he received combined with his on-the-job experience essentially made him a specialist in the petitioner's processes and particularly the SAP technology and project within a one-year period, such that he could also have been employed abroad in a position involving specialized knowledge for the requisite one-year period. See 8 C.F.R. § 214.2(l)(3)(iv). In addition, although a limited discussion of the petitioner's products and services is submitted, it is somewhat hard to understand, thereby precluding 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 successfulness 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.

The petitioner's appeal essentially claims that the previously-submitted evidence clearly outlines the beneficiary's unique and uncommon knowledge, and thus qualifies the beneficiary as an intracompany transferee with specialized knowledge. Once again, the petitioner overlooks the fact that the beneficiary is undoubtedly one of many programmers 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 basic premise of computer programming and engineering despite specializing in different areas. 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

Merely claiming that the beneficiary has specialized knowledge without distinguishing the beneficiary from other application programmers in the field is insufficient for satisfying the burden of proof in this matter. It appears that at best, the beneficiary is akin to a professional or skilled worker as opposed to an employee possessing 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 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 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.").

² While a beneficiary is no longer required to have proprietary knowledge, such knowledge can still be a basis for this determination. Thus, although 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).

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 petitioner has not established that the beneficiary will not be labor for hire for an unaffiliated employer. Specifically, the petition suggests that the beneficiary will be coming to the United States to render his services on-site to IBM's client, British Petroleum (BP). If this is the case, the beneficiary is ineligible for classification as an L-1B intracompany transferee.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F), provides that a beneficiary purported to have specialized knowledge will be ineligible for classification as an L-1B intracompany transferee if the beneficiary will be stationed primarily at the worksite of an employer other than the petitioner *and* if the placement of the beneficiary will be "essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge *specific to the petitioning employer* is necessary." (emphasis added). This section was added by the L-1 Visa Reform Act of 2004, which was enacted on December 8, 2004 as part of the Omnibus Appropriations Act for FY 2005, and is applicable to all L-1B petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004); *see also* United States Citizenship and Immigration Services, Press Release, June 23, 2005, "USCIS Implements L-1 Visa Reform Act of 2004," *available at* www.uscis.gov/files/pressrelease/L1_VisaReformAct_062305.pdf (accessed on March 9, 2007). A primary purpose of this amendment was to prohibit the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. s11686 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, *available at* http://judiciary.senate.gov/member_statement.cfm?id=878&wit_id=3355 (accessed on March 9, 2007).

In this matter, it appears that the beneficiary will be stationed primarily at a workplace of BP, an unaffiliated employer, and not to the petitioner. If this presumption is correct, the beneficiary is ineligible under section 214(c)(2)(F)(ii) for classification as an L-1B intracompany transferee having specialized knowledge, because in order for an offsite specialized knowledge worker to be eligible for L-1B classification, the petitioner must establish that the beneficiary is not being employed as "labor for hire" for the unaffiliated employer. Since the petitioner contends that the beneficiary has received extensive training of BP proprietary and in-house procedures, it appears that the beneficiary's specialized knowledge is related to the unaffiliated employer's processes and procedures. Thus, the beneficiary would fall squarely within the prohibition imposed by the L-1 Visa Reform Act of 2004 on the "outsourcing" of L-1B nonimmigrants who do not have specialized knowledge related to the provision of a product or service specific to a petitioner.

Moreover, a review of the facts of this petition reveal that this is exactly the type of employment relationship the L-1 Visa Reform Act of 2004 was adopted to prohibit. As explained above, this legislation was proposed to primarily prevent the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software. In this matter, the petitioner has indicated that the project on

which the beneficiary has been working, both abroad and in the United States, involves the upgrade of ABAP applications for the SAP project on behalf of BP. The petitioner has been hired by BP to provide employees to implement this service, which is undoubtedly a service that other application programmers in the United States could provide.

Furthermore, the fact that the beneficiary appears to be rendering his services to an unaffiliated employer on behalf of IBM, as opposed to the petitioner, raises the additional question of whether IBM and the petitioner are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). While it is claimed that the beneficiary will be rendering his services on behalf of the petitioner's parent company in the United States, there is insufficient evidence in the record to establish that this claimed parent-subsidiary relationship in fact exists. The petitioner, identified as the Indian employer, uses a North Carolina address but claims that the place of employment will be at IBM's offices in Tulsa, Oklahoma. On the other hand, the record also suggests that the place of employment is actually on-site at IBM's client, BP, and not at IBM or at an actual branch of the petitioner. No documentation establishing the nature of the Oklahoma entity had been provided; therefore, a presumption of ineligibility is created since the nature of the relationship has not been defined. 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)). Regardless, the petitioner may not petition for L-1B employees who are not directly employed by an affiliated U.S. office. *See Matter of Penner*, 18 I&N Dec. at 54.

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.

ORDER: The appeal is dismissed.