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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 05 252 51475 Office: TEXAS SERVICE CENTER Date: **MAY 01 2007**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 Illinois and claims to be engaged in the business of information processing, manufacturing, sales and service. It seeks to temporarily employ the beneficiary as a BaaN consultant at a "location" in Rolling Meadows, Illinois 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 (1) the beneficiary had been employed abroad in a specialized knowledge position; or (2) the intended employment in the United States required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, 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 gained specialized knowledge during his employment abroad and was employed in a specialized knowledge position; 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 August 29, 2005, the petitioner explained that the purpose of the beneficiary's transfer to the United States was to assist the petitioner's on-site team with the support and development of an application identified as BaaN IV (Enterprise Resource Planning), which was outsourced by a U.S. company, International Trucks and Engines, to the foreign entity. The petitioner noted that the team would interface with the U.S. team and would coordinate activities with the Indian company for the successful execution of the project and the eventual transfer of the BaaN IV application to India.

With regard to the beneficiary's qualifications and experience, the petitioner explained that he had obtained a Bachelor of Engineering from Osmania University and subsequently obtained a Master's in Production Engineering from Mysore University. Further, prior to his employment with the Indian entity which commenced on March 1, 2004, the petitioner stated that the beneficiary worked as a [REDACTED] for two different entities from December 2000 to December 2003.

The first issue to examine in this matter is whether the beneficiary was employed abroad in a specialized knowledge capacity for one full year out of the three years immediately preceding the filing of this petition. With regard to the beneficiary's employment abroad and his specialized knowledge gained therein, the petitioner stated:

[The beneficiary] has the specialized knowledge that is needed for the proposed position. He has advanced knowledge of the BaaN IV (ERP) application. This advanced knowledge includes:

- **The BaaN IV ERP application** – This is an Enterprise Resource Planning (ERP) application. ERP is a business management system that integrates all areas of the business, in this project – International, including planning, manufacturing, sales and marketing. This application aid International implement ERP [sic] in such activities, such as order training, inventory control, manufacturing and customer service. The BaaN IV ERP application combines each department's own computer system into a single integrated software program that runs off of a single database so departments can share information and communicate easily. This application simultaneously serves the need of people in sales, finance, manufacturing and warehouse and each department can have access to information in other departments. The ultimate goal of this application system [is] to help management be establishing better business practices and equipping them with the right information to make time[ly] decisions.

- **Waterfall SDLC Methodology** – This is a process model for software engineering where each phase must be completed in a strict sequence of requirements analysis, design, [implementation]/integration, and testing. This linear sequential model suggests a systematic, sequential approach to software development that begins at the system level and processes through software requirements analysis, design, coding and testing, integration and testing, and maintenance.

The petitioner further stated that the beneficiary uses the above-referenced methodologies in his current daily job duties. It further stated that the beneficiary utilized this knowledge through his daily work and involvement in projects as well as the training he received with regard to BaaN Tools. Finally, the petitioner claims that his direct involvement in the BaaN ERP application “clearly distinguishes himself from most people in the IT industry and helps to establish his specialized knowledge of this ERP system.”

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge and was thus employed abroad in a qualifying specialized knowledge position. Consequently, a detailed request for evidence was issued on October 11, 2005, which requested 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. Specifically, the director requested documentary evidence of the training the beneficiary received while employed by the petitioner, as well as a definitive estimate of when the beneficiary actually acquired this specialized knowledge.

The petitioner responded on November 17, 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 methodologies. The petitioner emphasized that the beneficiary's five years of employment in the IT industry, nineteen months of which was spent working for the foreign entity, gave him specialized knowledge. The petitioner claims specifically that his involvement in the upgrade and migration of the BaaN ERP system for various clients imputed in him the required specialized knowledge, and concludes by stating that “[i]t could be fairly stated that the [beneficiary] [had] specialized knowledge of the company at the time of filing of this petition.” The petitioner also claimed that the beneficiary received classroom training and possessed specialized knowledge of QMS and AMS, two proprietary and internal-use-only business systems of the petitioner. No documentation was submitted in support of these contentions.

The director determined that the record failed to establish that the beneficiary possesses specialized knowledge, and therefore found that he had not been employed abroad in a specialized knowledge capacity. 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 noted that despite the claims of the petitioner that the beneficiary received classroom training, no documentation of such training was submitted. On appeal, the petitioner requests reconsideration of the beneficiary's qualifications and submits a synopsis of the statements previously submitted prior to adjudication.

On review, the record does not contain sufficient evidence to establish that the beneficiary was employed abroad in a specialized knowledge capacity.

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 and his responsibilities as a BaaN consultant. 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 his daily duties distinguishes his knowledge as specialized. Despite the petitioner's detailed discussion of the ██████████ (ERP) applications, 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 re-submitted much of the same information that was submitted in the initial letter of support. The letter states that the beneficiary's five years of experience in the IT industry, and more specifically his nineteen months working for the petitioner, has established his knowledge of the petitioner's processes and application as specialized. However, although the petitioner contends that the beneficiary received classroom training, the petitioner provides no evidence of any training received by the beneficiary. More importantly, however, is the fact that no specific information regarding the nature of this alleged training was provided. The petitioner contends that the beneficiary is skilled in QMS and AMS, two proprietary applications of the petitioner. This claim, however, is not persuasive for two reasons. First, the petitioner provides no documentation of any training or hands-on experience the beneficiary has had in these areas. Second, and most importantly, the petitioner's focus is on the BaaN and BaaN IV applications, and makes no mention or connection of why knowledge of QMS or AMS would distinguish the beneficiary from other similarly employed persons with the petitioner or in the industry. As emphasized by the petitioner, the crucial application is BaaN. Although the beneficiary has worked as a BaaN consultant for five years and for three different companies, there is no evidence to show that his training in BaaN tools differs from any other consultant with five years of experience in BaaN tools.

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. No documentation was submitted that distinguishes the beneficiary from other BaaN consultants in the industry. Also, the petitioner failed to submit any evidence of what other BaaN consultants under its employ do on a daily basis. Finally, no evidence of training exclusively offered to the beneficiary and other key personnel was provided, thereby rendering it unlikely that the beneficiary is one of only a few consultants that is capable of working on the BaaN IV application.

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 possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad. However, these assertions do not constitute evidence. Merely asserting that "[i]t could be fairly stated that the [beneficiary] [had] specialized knowledge of the company at the time of filing of this petition" is insufficient to show that the beneficiary in fact possessed specialized knowledge and was employed in a qualifying capacity abroad. 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)).<sup>1</sup> 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. 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 and fellow team members appear to have the same skills and background in BaaN as the beneficiary. It is not unreasonable, therefore, to conclude that other similarly trained consultants have achieved or would achieve the same level of knowledge as the beneficiary by simply working in the industry for five years.

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

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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, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

"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 main argument that the beneficiary's knowledge is more advanced than other programmers in the field is based on the beneficiary's experience, specifically his nineteen months working for the petitioner and his total of five 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 other consultants, 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 its 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 five years of experience in the IT industry and a background in BaaN 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 BaaN IV application, as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The claim that the beneficiary has specialized knowledge 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 applications and particularly the BaaN IV application and project within a period of seven months, such that he could have been employed in a position involving specialized knowledge for the requisite one-year period. 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(1)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge and cannot be found to have been employed abroad in a specialized knowledge capacity.

The second issue in this matter is whether the proposed position in the United States requires specialized knowledge.

In the petitioner's letter of support dated August 29, 2005, the petitioner stated the following with regard to his proposed U.S. position:

As BaaN ERP Technical Consultant [the beneficiary] will be a key member of the team responsible for understanding the specific requirements from the client and architect the solutions [sic]. He will also be responsible for planning and prioritizing the application development upon consultation with the client and the delivery team in India. [The beneficiary] will be responsible for gathering and understanding the new business and technical requirements from the client, creating the technical specifications based on the requirements and facilitating the transfer of the specifications to the development team in

India. He will analyze the system requirements documents. [The beneficiary] will coordinate with the client and the offshore delivery team on project tasks. He will also be responsible for performing Unit testing of the component codes in isolation and participating and supporting Systems testing of the overall application, including writing and executing test cases and test plans.

In order to qualify for this position, the individual must have professional knowledge in a specific field of the BaaN ERP application and specifically the BaaN IV (ERP) application. [In] addition the individual should have knowledge of the technologies and tools that are required for the daily job duties described above. These technologies include: the International Corporation client server, and Upgradation and Migration. Further, this position requires the specialized knowledge of the Waterfall SDLC Methodology so that future development of the application continues to follow this methodology.

The proposed U.S. possession, as claimed above, requires an individual with "professional knowledge" in the field of BaaN ERP applications. As addressed previously in this decision, the petitioner has provided no evidence to distinguish the beneficiary from any other similarly-trained consultant with experience in BaaN. Nor has the petitioner submitted evidence to show that the BaaN project is an application that only a key employee of the petitioner would understand and that the petitioner would suffer significant economic inconvenience to train and/or teach someone the specialized knowledge apparently possessed by the beneficiary. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

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 consultants 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 applications 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.<sup>2</sup>

Merely claiming that the beneficiary has specialized knowledge without distinguishing the beneficiary from other BaaN consultants 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

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<sup>2</sup> 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).

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.").

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 also failed to establish that the beneficiary will be controlled and supervised principally by the petitioner during his employment at the workplace of the unaffiliated employer. Section 214(c)(2)(F)(i) of the Act, 8 U.S.C. § 1184(c)(2)(F)(i). In this matter, it appears that the beneficiary will be working directly for the foreign entity at a client site in Illinois. The petitioner does not identify the beneficiary's current manager or explain how, exactly, the beneficiary is managed and controlled while offsite at the unaffiliated employer's workplace. 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)). Therefore, since the record indicates that the beneficiary will be managed by the foreign entity, and will not have any employment relationship with the U.S. office, the beneficiary cannot be deemed an intra-company transferee because he will not be rendering his services to a subsidiary or affiliate of the foreign entity in the United States. *See Matter of Penner*, 18 I&N at 54 (holding that a Canadian corporation could not petition for L-1B employees who were directly employed by the Canadian office rather than a United States office). Since the beneficiary in this matter will be directly employed by the Indian company at a client worksite in Illinois, he is ineligible for classification as an L-1B intracompany transferee with specialized knowledge.

Moreover, 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](http://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](http://judiciary.senate.gov/member_statement.cfm?id=878&wit_id=3355) (accessed on March 9, 2007).

In this matter, the record indicates that the beneficiary will be stationed primarily at a workplace of International Trucks and Engines. The beneficiary, therefore, 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. The petitioner contends that the purpose of the beneficiary's transfer was to assist the petitioner's on-site team with the support and development of an application identified as BaaN IV (Enterprise Resource Planning), which was outsourced by International Trucks and Engines, and claims that his primary responsibilities will be to create and implement technical specifications set forth by the client. 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 involves professional knowledge of BaaN ERP applications, which is undoubtedly an application that other BaaN consultants in the United States could provide.

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).

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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.