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U.S. Citizenship and Immigration Services

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FILE: LIN 03 010 54659 Office: NEBRASKA SERVICE CENTER Date: MAY 21 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
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 AAO will dismiss the appeal.

The petitioner is an information management consulting firm. The beneficiary was previously approved for an L-1B visa under a blanket petition and was temporarily employed by the petitioner. The petitioner seeks to employ the beneficiary in the position of computer consultant programmer as an L-1B specialized knowledge intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1101(a)(15)(L).

The director denied the petition concluding that the beneficiary is not employed in a position that involves specialized knowledge. Specifically, the director stated that the petitioner had failed to indicate that the beneficiary received any more training than the general training offered to each consultant employed by the foreign entity. Furthermore, the director noted that while the petitioner asserts that the customized applications are considered proprietary work products and are not available in the general marketplace of computer application products, no evidence has been submitted to support this claim. 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 for the petitioner asserts that the director's decision was based on a misapplication of the law and because the director failed to consider all of the presented evidence.

To establish eligibility for the nonimmigrant L-1 visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. 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.

The issue in this proceeding is whether the beneficiary possesses "specialized knowledge" as defined in the Act and the regulations.

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.

A "specialized knowledge professional" is further defined at 8 C.F.R. § 214.2(l)(1)(ii)(E) as:

> [A]n individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

In a letter attached to the petition, the petitioner stated that the beneficiary has the following job responsibilities: "assist in performing consulting work related to the design, development, testing and implementation of customized business system software applications developed by Kanbay exclusively for the Household organization." The petitioner stated " [o]nly a fraction of the consultants at Kanbay have the specialized combination of skills and knowledge possessed by [the beneficiary]." The petitioner stated that the beneficiary has knowledge of GlobalLink, which is a proprietary system of the petitioner. The petitioner stated the beneficiary has extensive knowledge of the client's computer systems, processes, and business systems applications. The petitioner also stated:

> [The beneficiary] has received extensive corporate training, which includes ten weeks of Kanbay consulting training, client systems orientation on Household business systems, one year of mentoring from his project manager, three months of onsite experience at Household in the United States, and training in various domains from Kanbay Subject Matter Experts.

The petitioner also provided staffing statistics and stated that it employs 1,200 computer professionals world wide. The petitioner stated that approximately 500 consultants are assigned to develop customized software for the client, Household, and 100 of those consultants are staffed in the United States at the Household client site. In support of this petition, the petitioner provided copies of the beneficiary's educational documents,

general information about the petitioner's services, a copy of the consulting agreement with their client, Household, and the petitioner's financial statements.

In a request for evidence, the director noted that the record did not sufficiently establish that the beneficiary possessed specialized knowledge. The director requested that the petitioner submit evidence establishing that: the beneficiary possesses special knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests and its application in international markets. The director noted that although the beneficiary may posses an advanced knowledge of the processes and procedures of the company, evidence must be submitted to describe and distinguish that knowledge from knowledge possessed by others within the organization, and the industry at large. Furthermore, the director stated that the evidence must establish that the beneficiary's duties for the qualifying employment abroad, and the duties in the United States require a person with specialized knowledge.

The director stated acceptable evidence includes but is not limited to:

1) The beneficiary's wages during the twelve-month period of employment with the foreign organization. Acceptable documentation is a copy of the beneficiary's foreign tax return for one year in the previous three which names the employer and the beneficiary, specifies the period for which the income was earned, specifies the income earned and shows any taxes paid; or complete, legible copies of the beneficiary's pay slips issued by the foreign organization for twelve continuous months in the previous thirty-six month period.

2) The training provided by the organization to the beneficiary, beginning with initial new employee orientation to the present. Acceptable evidence includes copies of certificates, personnel records, and/or a letter from an authorized representative of the organization who has knowledge of the beneficiary's training (such as a personnel officer or training official).

3) For the Service to make a determination that the beneficiary's knowledge is specialized[,] evidence must be submitted to establish the full range of positions utilized by the petitioner in its business. Also, submit an organizational chart showing the alien's proffered position her [sic] in the U.S. in relation to others in the company.

4) Copies of brochures or booklets issued for distribution to customers and clients which describe the capabilities of the organization and its employees.

The director also requested the number of individuals employed in the United States by Kanbay, Inc. Additionally, the director requested evidence of the qualifying relationship between the petitioner and the foreign entity.

In response to the request for evidence, counsel for the petitioner provided the pay stubs for the beneficiary's employment with the foreign company and his Indian income tax return. Additionally, counsel provided an organizational chart titled EAGLE (Entry and Governance of the Legal Environment) project. The beneficiary is listed as the onsite coordinator. Counsel provided a copy of the L-1 Blanket certification and an attached affidavit containing all related entities. Counsel also provided the IRS Form 1120 Corporate Tax

Returns for Kanbay International, Inc. and Kanbay, Inc. including Form 5471 which counsel stated confirms 99% ownership of Kanbay Software (India) Pvt. Ltd.

Additionally, counsel submitted letters from Kipling Knox, Director of Web Services at the University of Illinois and Gregory Brewster, Ph.D., Associate Dean at DePaul University. The petitioner submitted a statement from Ashok Sathe, Senior Manager of Core Accounts at Kanbay. The petitioner also submitted a general statement of training at the Kanbay organization. Counsel for the petitioner stated that there are approximately 250 individuals employed by Kanbay in the United States.

In his decision, the director concluded that the record did not establish that the proffered position in the United States requires an alien with specialized knowledge. Upon reviewing the evidence provided by the petitioner, the director determined the petitioner had not indicated that the beneficiary of the instant petition has received any more training than the general training offered to each consultant employed by the petitioner. The director did not find that the record establishes that the beneficiary's knowledge is uncommon or advanced, and not generally known by others in the field. The director also concluded that although the petitioner asserts that the customized applications are considered proprietary work products and are not available in general market place of computer application products, no evidence had been submitted to support this claim. Consequently, the director denied the petition.

On appeal, counsel for the petitioner submits a brief in which he asserts that the director's denial of the petition was based on a misapplication of the statute, regulations, and current CIS guidance. Counsel submits additional evidence in support of the petitioner's appeal. Counsel states this additional evidence provides further support that the beneficiary possesses knowledge which would be difficult to impart to another individual without significant economic inconvenience to the petitioner. Counsel further asserts that because the software applications are proprietary, the beneficiary also possesses knowledge which normally can be gained only through prior experience with the petitioner.

However, the AAO notes the petitioner was afforded the opportunity to provide additional evidence to the director. The director requested evidence that the beneficiary possesses special knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests and its application on international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures. Specifically, the director noted that the evidence may include training provided by the organization to the beneficiary including copies of certificates and/or letters from an authorized representative of the organization who has knowledge of the beneficiary's training. On appeal, the petitioner presents a training certificate issued by the petitioner to the beneficiary. The petitioner also submits a letter from its client stating the proprietary nature of the project that the beneficiary is assigned to and the nature of the work involved. Additionally, the petitioner submits evidence to demonstrate that it would not be feasible to train a U.S. worker for the beneficiary's position. However, this additional evidence was not submitted in response to the director's request, but on appeal. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established as of the time of filing. 8 C.F.R. §§ 103.2(b)(8) and (12).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

First, counsel claims that the "agency's written policy requires the Service to interpret the term [specialized knowledge] broadly" pursuant to 8 C.F.R. §214.2(l)(ii)(D). In support of this claim, counsel refers to a 1994 memorandum written by the Immigration and Naturalization Service (INS) (now CIS) Acting Associate Commissioner. Counsel claims that the "guidance provided in the [1994] memo is the current state of the law and, taken together with the statute and regulations, should be the standard used in determining whether an individual possesses specialized knowledge." Additionally, counsel disagrees with the director's use of the decision *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982) in his determination that CIS does not find that simple experience and familiarity constitutes "special knowledge" of the company product and its application in the international market. On appeal, counsel asserts that the director relied on the *Penner* case as the legal standard of specialized knowledge.

Upon review of the record, counsel is incorrect in his conclusion that the director relied solely on the *Penner* decision as the legal standard of specialized knowledge. The director primarily relied on the statute and regulations. The director determined that the petitioner had not provided sufficient evidence that the beneficiary received any more training than the general training offered to each consultant employed by Kanbay. The director acknowledged that the beneficiary possesses working knowledge of the project, but that the evidence did not sufficiently establish that the beneficiary's knowledge is uncommon, noteworthy, or distinct. The director merely cites *Penner* in support of the proposition that "petitions may be approved for persons with specialized knowledge, not for skilled workers." The director further stated "[t]he distinction between a skilled worker and one who will be employed in a capacity involving specialized knowledge applies in this case."

On appeal, counsel states that the beneficiary qualifies as an intracompany transferee with specialized knowledge based on his experience with the processes and products that are unique to the petitioner's organization. Counsel states there are two primary components to the beneficiary's specialized knowledge. First, counsel states that the beneficiary is "intimately familiar with GlobalLink, a specialized methodology used on within the petitioner's organization." Secondly, counsel states that the beneficiary has an advanced level of understanding of EAGLE, a proprietary software developed for the petitioner's client. Counsel asserts that the evidence establishes that the work being performed for the client, including the EAGLE project, is both complex and involves knowledge that is simply not available in the marketplace.

On appeal, counsel asserts that the director did not fully consider the evidence presented regarding the specialized knowledge possessed by the beneficiary. Counsel states that the L-1 petition contained evidence of training in GlobalLink. Counsel admits that "GlobalLink knowledge may not by itself constitute specialized knowledge, but taken together with the time spent abroad learning Household's system and developing the unique EAGLE software solution, it is the [p]etitioner's contention that [the beneficiary's] knowledge does rise to the level of 'specialized.'" Counsel refers to a job training certificate issued to the beneficiary that the petitioner did not submit until the appeal, despite the director's request for this evidence. As noted above, the AAO will only take into consideration documents that were presented in response to the

director's request for evidence. However, the AAO notes this certificate of completion states that the beneficiary completed on-the-job training in the client's VISION application. Additionally, counsel asserts that "not all consultants receive these certificates – they are issued only after an individual has completed a significant amount of on the job training on a particular client project." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not provided documentary evidence that not all consultants receive these certificates.

Counsel asserts that the evidence provided in the petition is sufficient to demonstrate that customized applications being developed by the petitioner for its client are considered proprietary work products. Counsel refers to a letter from a senior manager for the petitioner that explained the proprietary nature of the petitioner's work for the client. Additionally, counsel refers to the service agreement between the petitioner and its client which was submitted with the petition. On appeal, counsel presents a letter from the petitioner's client which states "the customization and enhancement work of this application is considered both original and proprietary in nature."

Furthermore, counsel asserts that the director erred in rejecting the opinion letters that were provided in the petition. The director stated "it is noted that they have made their observations from a simple review of the beneficiary's experience and proposed project assignment, rather than based on objective evidence." Counsel asserts that both "experts" based their statements on "a first hand understanding of the nature of software development and technical skills." Counsel sums up each expert's work experience. Counsel states that "it is the [p]etitioner's contention that [CIS] abused its discretion by dismissing these opinions due to a conclusion that the information provided was not objective."

On review, the petitioner has not established that the beneficiary has been and will be employed in a specialized knowledge capacity as required in 8 C.F.R. § 214.2(l)(3)(ii).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed that is sufficient to establish that the beneficiary will be employed in a specialized knowledge capacity. *Id.* In the present case, the petitioner submitted a general job description, which was stated above. The petitioner stated that the beneficiary has specialized knowledge of GlobalLink and the client's proprietary computer programs and software that are required in order to satisfactorily execute the job duties. The petitioner generally stated that the beneficiary will assist in performing consulting work related to the design, development, and testing of software applications developed for the client. The petitioner described different computer programs and projects of which the beneficiary has knowledge. However, the petitioner did not provide a detailed job description that establishes the beneficiary's specialized knowledge or that the position requires specialized knowledge. Specifics are clearly an important indication of whether a beneficiary's duties require specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the petitioner has not provided any evidence that the beneficiary has received any more training than other consultants for the petitioner. The petitioner has failed to differentiate the beneficiary's knowledge from that of others in the petitioner's company. The petitioner merely stated the beneficiary "has received

extensive corporate training, which includes ten weeks of Kanbay consulting training, client systems orientation on Household business systems, one year of mentoring from his project manager, three months of onsite experience at Household in the United States, and training in various domains from Kanbay Subject Matter Experts." The petitioner did not establish that this training or the knowledge received from this training is any more specialized than anything the other employees receive. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, counsel asserts on appeal that the beneficiary's knowledge, experience, skills, and training differentiate him from the other consultants of the petitioner, since "only a relatively small number possess the type of experience to warrant transfer to the United States to perform implementation and customization work and only a limited number are actually transferred." Counsel refers to statistical information that was provided by the petitioner in the initial petition. However, the petitioner simply stated that more than one third of their consultants are assigned to develop software for their client, and of these 500 consultants, one-fifth are staffed in the United States working on this client's projects. The lack of evidence in the record makes it impossible to draw a comparison between the consultants assigned to the client in general and those with specialized knowledge. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, *supra*. Also, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, *supra*; *Matter of Ramirez-Sanchez*, *supra*. Therefore, the director correctly concluded that the beneficiary's knowledge does not distinguish the beneficiary from other consultants that work for the petitioner.

Additionally, counsel continues to refer to the beneficiary's training in GlobalLink as evidence of the beneficiary's specialized knowledge. However, by counsel's own admission, knowledge of GlobalLink alone is not sufficient to establish specialized knowledge but it must be taken into consideration in conjunction with the beneficiary's knowledge of the client's computer software. Furthermore, the letter from the petitioner's senior manager of core accounts stated "consultants who develop these software applications have been trained in Kanbay methodologies and development techniques, including GlobalLink, Kanbay's proprietary system used to coordinate offshore development." Based on this statement, it would appear that all consultants who develop applications for clients must receive training in GlobalLink. Therefore, based on the evidence provided, the fact that the beneficiary has had training in GlobalLink does not rise to the level of "special knowledge".

Counsel asserts that CIS abused its discretion by dismissing the "expert opinion letters" that were submitted in response to the request for evidence. Counsel's assertions are not persuasive. Counsel did not provide evidence, such as a resume, to establish that the authors of the opinion letters should be considered experts. Furthermore, the petitioner did not disclose which specific documents the "experts" reviewed in rendering their opinions. Therefore, the AAO does not have the information needed in order to evaluate what objective evidence the experts based their opinion on. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

On appeal, counsel also refers to a 1994 INS memorandum as a guide for interpreting the statutory definition of specialized knowledge. Memorandum from [redacted] Acting Associate Commissioner, INS,

Interpretation of Specialized Knowledge, CO 214L-P (March 9, 1994). In the memorandum, the Commissioner noted that specialized knowledge is not limited to knowledge that is proprietary, exclusive, or unique, but also includes knowledge that is "different from that generally found in [a] particular industry." Counsel argues that the beneficiary's training in the petitioner's software programs and applications that were created for the client establishes that the beneficiary's knowledge rises to the level of "specialized." Upon review, counsel does not explain how the beneficiary's knowledge is different than that of other computer consultants in the industry. Simply because the beneficiary has knowledge of computer software programs and applications that were created for the petitioner's client, does not necessarily distinguish the beneficiary from another computer consultant. The petitioner has failed to differentiate the beneficiary's knowledge from that of others in the industry. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel asserts the "[t]he guidance provided in the Puleo memo is the state of the law . . . ." However, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, it is noted that the memorandum was intended solely as a guide for employees and will not supercede the plain language of the statute or the regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the alien's place of employment.

Regarding the precedent decision that was cited by the director, counsel states that the legal landscape has changed since *Matter of Penner, supra,* was decided. Counsel asserts that "[i]n the 1990 Act, Congress relaxed the standards for specialized knowledge required for the L-1B subcategory." However, other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 amendment did not greatly alter the definition of the term.

Prior to the Immigration Act of 1990, the statute did not provide a definition for the term "specialized knowledge." Instead, the regulations defined the term as follows:

> "Specialized knowledge" means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organization's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

8 C.F.R. § 214.2(1)(1)(ii)(D)(1990).

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. H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. 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. The AAO concludes, therefore, that *Matter of Penner* remains useful guidance concerning the intended scope of "specialized knowledge" L-1B classification.

Finally, it is noted that the statutory definition still requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is a comparative concept and cannot be plainly defined. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." Neither counsel nor the petitioner provided sufficient evidence to compare the beneficiary's position and the claimed specialized knowledge of the beneficiary with other positions within the industry or in the petitioner's company. Even though the director specifically requested evidence of the beneficiary's training, the petitioner did not provide evidence of such training in its response. Instead, the petitioner provided a statement which described the training that all consultants receive. The director specifically requested evidence to establish a full range of positions utilized by the petitioner in its business. Again, the petitioner did not provide this information. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Additionally, the director requested an organizational chart showing the beneficiary's proffered position in relations to other in the company. Although the petitioner provided an organization chart, it was confusing and vague and did not show the beneficiary's position in relation to other Kanbay consultants working for the client.

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." *See 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 reason to employ that person. Accordingly, an employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee.

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 has not indicated that the beneficiary is one of a specific number of employees that have received the "specialized knowledge" training. Because the petitioner does not specifically provide this information, the AAO cannot conclude that the beneficiary is a specialized knowledge employee and does not represent the petitioner's average employee. While it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring him to the level of "key personnel."

In the present case, the petitioner has not provided evidence of the beneficiary's specialized knowledge. The petitioner claims that the beneficiary has specialized knowledge because of his training in GlobalLink and his knowledge for the client's proprietary applications and software but has not provided any evidence. 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, the director reasonably determined that the beneficiary does not qualify as a specialized knowledge worker.

Beyond the decision of the director, the AAO notes that the petitioner has submitted conflicting information regarding the claimed ownership of the petitioning corporation. To establish eligibility for this visa classification, the petitioner must establish that there is a qualifying relationship between the beneficiary's overseas employer and the U.S. petitioner. 8 C.F.R. § 214.2(l)(3)(i). In the present matter, the petitioner has submitted a copy of "blanket petition" approval notice and supporting affidavit. *See generally,* 8 C.F.R. § 214.2(l)(4). The affidavit asserts that the petitioner and the overseas employer are both "100% owned and controlled by Kanbay International, Inc.," thereby representing that they are qualifying affiliates. This affidavit was signed February 2002. However, it is noted that the 2001 IRS Form 1120 U.S. Corporation Income Tax return for Kanbay, Inc. indicates that [redacted] owns 42.5 percent of the common stock of the petitioning corporation. This evidence directly contradicts the petitioner's claimed relationship and raises questions regarding the ownership of the remaining 57.5 percent of the company's outstanding shares. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner did not submit copies of the corporate stock certificates, stock certificate ledger or registry, corporate bylaws, or the minutes of relevant annual shareholder meetings that must be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). For this additional reason, the petitioner must be denied and the appeal will be dismissed. In addition, it is recommended that the director review the petitioner's approved blanket petition for possible revocation or amendment.

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). For this additional reason, the petition must be denied.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.