U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

b7

[redacted]

File: LIN 06 124 51889 Office: NEBRASKA SERVICE CENTER Date: DEC 04 2007

IN RE: Petitioner:
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:

[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, 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 AAO will dismiss the appeal.

The petitioner seeks to employ the beneficiary temporarily in the United States as a nonimmigrant intracompany transferee with specialized knowledge (L-1B) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an Alaskan corporation, is a provider of specialty aerial work and air taxi services. It claims to be a subsidiary of Prism Helicopters Ltd., located in Canada. The beneficiary was previously granted L-1B classification to serve as a helicopter pilot for a two-year period and the petitioner now seeks to extend his status for three additional years.

The director denied the petition concluding that the petitioner had not established: (1) that the U.S. company has a qualifying relationship with the foreign entity; or (2) that the beneficiary possesses specialized knowledge and would be employed in a capacity involving specialized knowledge.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the regulations clearly contemplate a parent-subsidiary relationship in which the parent company owns less than 50 percent of the subsidiary, yet controls the subsidiary. Counsel further contends that the director applied an inappropriate standard when determining whether the beneficiary possesses specialized knowledge by requiring the petitioner to establish that the beneficiary's knowledge is "unique" or "one-of-a-kind." Counsel submits a brief and additional evidence in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the 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 first issue addressed by the director is whether the petitioner established that the U.S. company and the beneficiary's previous foreign employer have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(*1*) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(*2*) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on the L Classification Supplement to Form I-129 that it is "49% owned by Prism Ltd., B.C., Canada" and stated that the two companies have a parent-subsidiary relationship. The petitioner identified the beneficiary's last foreign employer as "Prism Helicopters, Ltd." located in British Colombia, Canada.

In a letter dated March 7, 2006, the petitioner again noted that the foreign entity owns 49% of its shares and explained: "[The petitioner] was incorporated in order to satisfy the U.S. sovereignty rules of the Federal Aviation Authority (the 'FAA') which requires that U.S. commercial aircraft service companies meet U.S. citizenship content requirements." The petitioner attached a corporate organizational chart indicating that the ownership of the U.S. company is as follows:

[redacted]

Also submitted with the initial petition were three stock certificates, which demonstrated the following claims of ownership:

[redacted]

On April 18, 2007, the director requested additional evidence. Specifically, the director noted that the Soloys appeared to own and control the petitioner based on their 51% ownership and 75% interest in the voting shares of the company. The director requested evidence explaining how the foreign entity, as minority shareholder with 49% ownership and only 25% of the voting shares, was in fact in control of the petitioner as claimed.[1]

[1] It is noted for the record that the petitioner and the director misstated the percentage of voting shares owned by each party. As a percentage of the voting shares issued, it appears that the [redacted] own 81% and the foreign entity owns 19%, not 75% and 25%, respectively.

In a response dated July 7, 2006, counsel for the petitioner referenced the definition of "subsidiary" at 8 C.F.R. § 214.2(l)(1)(ii)(K) and *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982), noting that "the regulation clearly states that even less than 50% ownership would be sufficient to establish a subsidiary relationship if the parent can show control in fact."

The petitioner submitted a document entitled "Agreement of Control" between Prism Helicopters Ltd. (Prism Canada) and Prism Helicopters Inc. (Prism USA). was submitted. This document, which was undated, unsigned, and labeled "DRAFT" at the top of the page, indicated that the share and voting stock structure of the petitioner was formed in a manner which would satisfy Federal Aviation Authority (FAA) requirements, and that overall control of the petitioner would be maintained by [redacted] sole owner of [redacted] The agreement further indicates that when [redacted] attained U.S. citizenship, all shares and voting stock would be transferred to Prism Canada.

Counsel emphasized that financial, accounting and payroll administration of the U.S. entity is performed from the Canadian office, and that all aircraft are owned by the Canadian company and leased to the petitioner.

The director denied the petition on August 15, 2006, concluding that the petitioner had failed to establish the existence of a qualifying relationship between the U.S. company and the claimed Canadian parent company. The director acknowledged counsel's arguments and the control agreement submitted in response to the request for evidence, but found this evidence insufficient to establish that the foreign entity in fact controls the U.S. company. The director noted that the control agreement was neither signed nor dated, and was clearly a draft document. The director therefore was "unable to conclude that a formal, legally binding control agreement existed between the petitioner and the foreign entity at the time the instant petition was filed."

On appeal, counsel for the petitioner asserts that the petitioner established by a preponderance of the evidence that a qualifying relationship exists. Counsel contends that the director did not follow Citizenship and Immigration Services (CIS) regulations in determining otherwise. Counsel objects to the director's citation to *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988) in rejecting the draft version of the control agreement submitted in response to the request for evidence. Counsel distinguishes the facts of the instant matter from those in *Matter of Ho*, noting that here, every document provided states that [redacted] is the owner of the Canadian entity and has control over the entire Prism group, including the petitioning company.

Counsel further addresses the absent signatures and dates on the draft version of the control agreement, stating that this issue is "meaningless." Counsel states "there exists nothing in the law which requires ratification of a prior existing agreement." Counsel contends that [redacted] has had "control in fact" over the petitioning company since 1998 and this fact has not changed. Counsel emphasizes that "the only reason [the petitioner] was incorporated with [redacted] as its [redacted]nd majority shareholder was to meet U.S. sovereignty rules of the FAA which require that a U.S. commercial aircraft service meet U.S. citizenship content requirements." Again citing to the regulatory definition of "subsidiary" and *Matter of Hughes*, counsel asserts that the petitioner has established the existence of a parent-subsidiary relationship between the Canadian and U.S. companies.

In support of the appeal, counsel submits an executed "agreement of control" between the Canadian and U.S. companies that was signed by [redacted] in October 2006. The petitioner also provides the following documentary evidence not provided previously:

- A Biennial Report filed by the petitioner with the Alaska Secretary of State on June 2, 2000, which identifies the foreign entity as a 49% shareholder and as a "foreign affiliate."
- A Shareholders Agreement dated February 20, 1999 between the Canadian entity and [redacted] which includes a provision whereby the Soloys are required to offer their shares to [redacted] for purchase should he obtain U.S. citizenship.

Upon review, the petitioner has not established that the U.S. entity and the foreign entity have a qualifying relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also 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. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In this case, the petitioner has provided documentary evidence in the form of three stock certificates which outline the shareholder interests in the U.S. entity, and it has supplemented this evidence with a "control agreement" and explanatory statements which discuss the nature of the foreign entity's role in the oversight of the petitioner. The corporate stock certificates, on their face, indicate that the foreign entity owns 49% of the petitioner and only 19% of the company's voting stock.

The definition of subsidiary pertains to a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control

and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The AAO will address each factor separately. First, based on the evidence submitted, it is clear that the foreign entity does not own, directly or indirectly, more than half of the entity and control the entity. The record reflects that the Soloys own more than half of the entity (51%) and that they have de facto control over the entity (by virtue of owning 81% of the voting shares in the company). Second, it is likewise clear that the foreign entity does not own, directly or indirectly, half of the entity and control the entity, since the stock certificates reflect that the foreign entity owns only 49% of the petitioner. Third, the foreign entity does not own, directly or indirectly, 50 percent of a 50-50 joint venture and have equal control and veto power over the entity. No claim of a joint venture is made in the record, and the petitioner does not dispute the 51% versus 49% ownership ratio set forth in the stock certificates.

Therefore, the critical issue to examine in this matter is whether the foreign entity owns, directly or indirectly, less than half of the entity, but in fact controls the entity. The first part of this definition is satisfied, since it is undisputed that the foreign entity owns less than half of the petitioner (49%). The critical element, therefore, is whether the foreign entity controls the petitioner.

Control may be de jure by reason of ownership of 51% of outstanding stocks of the other entity or it may be de facto by reason of control of voting shares through partial ownership and by possession of proxy votes. *Matter of Hughes,* 18 I&N Dec. at 293. Since the foreign entity is the minority owner of the petitioner with 49% of the outstanding shares, the issue before the AAO is whether the foreign entity has *de facto* control of the petitioner.

In order to establish *de facto* control of an entity, the petitioner must provide agreements relating to the control of a majority of the shares' voting rights through proxy agreements. *Id.* A proxy agreement is a legal contract that allows one individual to act as a substitute and vote the shares of another shareholder. *See Black's Law Dictionary* 1241 (7th Ed. 1999). The agreement of two individuals to vote shares in concert does not rise to the level of a proxy agreement that would give one individual control over the voting rights of a majority of the issued shares.

According to the petitioner, the "control agreement" submitted for the record is sufficient to prove that the foreign entity is in fact in control of all aspects of the U.S. entity. The petitioner indicates that the disbursement of 81% of the voting shares to the Soloys is an attempt to comply with FAA regulations, and is not indicative of the true control of the company. However, the absence of a ratified shareholders' agreement or voting proxy raises doubts with regard to the validity of the petitioner's claim. The petitioner urges the AAO to disregard the 510 voting shares of the Soloys, which represent 81% of the voting shares issued, and instead rely on an unsigned and undated document which claims that [redacted] owner of the foreign entity, in fact controls the petitioner. As stated above, such an informal agreement does not rise to the level of a proxy agreement, and is not acceptable as proof of the foreign entity's right to vote the shares of the Soloys.

Although the petitioner has submitted a ratified control agreement on appeal, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future

date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The agreement was signed in October 2006, subsequent to the denial of the petition.

The AAO acknowledges counsel's claim that "there exists nothing in the law which requires ratification of a prior existing agreement," and his contention that [redacted] has had "control in fact" over the petitioning company since 1998. However, evidence that the petitioner creates after USCIS points out the deficiencies in a petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. The petitioner has been unable to provide any contemporaneous documentary evidence supporting its claim that [redacted] has controlled the U.S. company since its inception. The non-existence or unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The AAO recognizes evidence that the operations of the petitioner and the foreign entity are closely related from an operational standpoint. However, the petitioner must still document that the relationship between the two entities meets the specific ownership and control criteria for a parent-subsidiary relationship as set forth in the regulations. Based on the evidence presented, it is concluded that the petitioner and the foreign entity did not have a qualifying parent-subsidiary relationship. For this reason, the appeal will be dismissed.

The second issue addressed by the director concerns the beneficiary's qualifications as a specialized knowledge employee. This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The nonimmigrant petition was filed on March 22, 2006. In a letter dated March 7, 2006, the petitioner described the beneficiary's proposed duties as a long line helicopter pilot and the beneficiary's qualifications for the position as follows:

> [The beneficiary] is a fully licensed helicopter pilot. He has completed specialized training courses offered for specialty aerial work by [the foreign entity] for Vertical Reference (Long Line), drill moves on mining operations, placement of non-specific equipment with precision up to 200-foot line, moving people and sling equipment from camp to camp, and has worked as a helicopter pilot since 1997. [The beneficiary] is specially endorsed with RH22, 214 B1, BH06 AS 350, and MD 500. [The beneficiary] has been employed by [the foreign entity] since August 2001.
>
> The helicopter pilot requires an employee with the specialized knowledge gained by [the beneficiary]. The helicopter pilot is responsible for the safety and smooth functioning of the helicopter and for the safety of all those on board of the aircraft. A helicopter pilot has full authority on board at all times. On mining exploration jobs, the pilot must ensure that the load is moved precisely and under perfect control at all times to avoid hurting people on the ground or damaging equipment. Only helicopter pilots that are familiar with the technical flying involved in long line moves can carry out this task. In addition, a pilot on any mining exploration job is responsible for good coordination between the ground crew and the recording crew, as well as the safe and effective completion of the operation.
>
> As an employee, [the beneficiary] must also follow the guidelines outlined in the [petitioner's] Helicopter Operations Manual.
>
> Due to the intensive training and extensive knowledge required to operate safely and efficiently in long ling vertical reference work, we are compelled to use [the petitioning company's] pilots who have exceeded company standards and graduated from months of close supervision.

The petitioner explained that the U.S. and foreign entities offer helicopter charter services, including vertical reference long line capabilities, which are used in heli-logging, mining exploration, forestry, aerial construction, and seismic operations. In support of the petition, the petitioner submitted a copy of the foreign entity's operations manual, copies of contracts with customers, and a brochure describing the company's long-line helicopter services.

The petitioner also submitted a copy of the beneficiary's resume, which indicates that his qualifications include: "Pilot Decision Making Course," "Human Factors," "Long-lining," "Water-bucketing," and "Confined Areas," and his endorsements include Bell 214 B1, RH22, and BH06. His duties as a line pilot with the foreign entity are described as: "General charter/external load, remote bush operations, long-line, water-bucketing." The beneficiary previously worked as a line pilot for an unrelated company from 1999 to 2001, where he gained experience in heli-logging.

In addition, the petitioner submitted the beneficiary's U.S. FAA Commercial Pilot's license, medical certificates, and equivalent Canadian transportation authority documents, a certificate of training in the transportation of dangerous goods, a certificate of training for a Transport Canada Pilot Decision Making course completed in December 2001, a training record for a Pilot Decision Making course provided by Pro

Aviation Safety Training in November 2005, and a Canadian Pilot Proficiency Check record for the 2005-2006 years.

The director issued a request for additional evidence on April 18, 2006, in which he advised the petitioner that the evidence of record did not adequately establish that the beneficiary will be employed in a capacity involving specialized knowledge. The director noted that "it appears that the beneficiary's purported specialized knowledge is based on his knowledge of piloting helicopters," and advised that the record did not establish that the beneficiary's knowledge is advanced, noteworthy, or distinguished by some unusual quality not generally known by practitioners in the beneficiary's field of endeavor.

The director therefore advised the petitioner to provide evidence that the beneficiary possesses an advanced or unique knowledge of the processes, procedures, research, equipment, techniques, management, and/or other interests of the company, and evidence to describe and distinguish that knowledge from the knowledge possessed by others who are similarly employed within the same occupation/industry. The director also requested evidence of any company-specific vocational, technical, and/or professional development courses which are related to the company's equipment, products, processes and/or procedures, including additional documentation in support of its claims. The director advised that if the beneficiary acquired his specialized knowledge only through practical employment experience, the petitioner must describe in detail how the beneficiary's training and/or work experience differs from the training and experience a similarly-employed worker in the industry would receive.

In addition, the director requested that the petitioner identify the U.S. company's and foreign company's employees by name, job title, and job duties, and explain the beneficiary's current and proposed duties in relation to the other employees.

In his response dated July 7, 2006, counsel for the petitioner stated that long line vertical reference specialty flying is unusual and distinct, and claimed that only one in four helicopter pilots attain this accomplishment. Counsel noted that the FAA requires commercial pilots working for commercial operators to achieve at least 500 hours of total flight time after obtaining a commercial rated helicopter pilot status, which requires at least 150 hours of fight time. Counsel noted that the petitioner requires their pilots to complete an additional company training course "to facilitate the advanced techniques that are required to perform long line vertical reference flying." Counsel stated that a new pilot does not have the skills or training necessary to accomplish this type of specialized tasks, and thus the beneficiary's specialized knowledge "goes far beyond that of an average helicopter pilot." Counsel provided the following explanation regarding the beneficiary's training:

> The beneficiary was required by [the foreign entity] to undergo training in higher density altitudes, mountainous terrains and controlling loads that are aerodynamically unstable. [The petitioner's] pilots are required to complete almost double the amount of flying time as a novice pilot. The complexity of these takes [sic] is much different from the standard helicopter pilot that simply acts as a helicopter taxi service. It generally takes [the petitioner's] pilots between one and two years, after licensing, to become truly proficient in this skill.

> The beneficiary's position at [the petitioner] requires the specialized knowledge of [the petitioner's] Advances [sic] Flying Techniques Vertical Reference Work course provides. The Beneficiary is required to operate the helicopter under severe conditions and in high density altitudes. At high density altitudes the aircraft can only operate at a reduced gross weight. Under certain conditions operating at higher density altitudes, the pilot would experience diminished control authority. This means that the main rotor blades and tail rotor blades are no longer as efficient. A greater level of experience is required to fly under these conditions.

The petitioner submitted a training syllabus for U.S. commercial license transition and advanced flying techniques vertical reference work. The vertical reference training includes a 40 hour introductory course, 120 hours of practical instruction with a 50 foot line at the entry level, 120 hours of practical training with a 100 foot line at level 2, and 120 hours of practical experience with a 200 foot line at level 3. The petitioner submitted a certificate from the foreign entity indicating that the beneficiary completed this training in Canada between May and September 2002. In addition, the petitioner submitted evidence that the beneficiary completed FAA Part 135 and Part 133 Recurrent Training.

In response to the director's request that the petitioner describe how the beneficiary's training and/or work experience differ from that typically possessed by others in his field, counsel stated that of the nearly 610,000 pilots in the United States and abroad, less than one percent are similarly licensed. Counsel emphasized that a commercial helicopter pilot is not authorized to fly for a commercial operation until they have received an additional 500 hours of flight time, after which they have to successfully complete the Part 135 FAA training and FAA Part 133 training, which authorizes specialty work, aerial photography, long line and utility flying. Counsel asserted that only 1.9% of all pilots obtain these two FAA qualifications, which represents the minimal training for the type of work conducted by the petitioner. Counsel noted that the petitioner's pilots undergo an additional 400 hours of training in vertical reference work and must also understand the specific type of work performed for the company's contracted clients.

The petitioner's response also included a description of "Long Line Vertical Reference" helicopter flying, which is a method of external load operations. The document further describes the complexity of the specialty, the training required, and the amount of time required to become proficient in all areas. The information provided indicates that some pilots who complete the training may be able to perform simpler jobs within two to three months, while it typically takes two to three years after initial training to achieve true proficiency in all areas. The petitioner noted that only one in four pilots is "cut out for long line vertical reference work."

The petitioner provided a list of employees for the U.S. and foreign companies, which included a total of twelve long line vertical reference specialist pilots and four line pilots.

The director denied the petition on August 15, 2006, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in a capacity involving specialized knowledge. The director acknowledged the petitioner's assertions that the long line vertical reference specialty is unusual and distinct, that not all helicopter pilots are able to perform this type of flying, and that only one in four pilots are capable of this accomplishment. However, the director concluded that the evidence submitted

did not sufficiently establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners who are similarly educated and/or engaged within the beneficiary's field of endeavor. The director also found insufficient evidence to establish that the beneficiary's position with the foreign entity or the proffered position require a person with specialized knowledge as that term is defined in the regulations.

The director noted that the FAA requirements necessary to become a commercial helicopter pilot are common to the industry and would be required of pilots who are similarly employed. Consequently, the director concluded that the FAA certification does not constitute specialized knowledge. The director further noted that the beneficiary's training in such areas as pilot decision making, transportation of dangerous goods, radio telephone operation, etc. are recurring training programs required by the Canadian aviation authority to maintain a pilot's proficiency, and therefore, completion of this training is not indicative of specialized knowledge.

Finally, the director acknowledged the petitioner's claim that it requires its pilots to complete an additional training course in "Advanced Flying Techniques and Vertical Reference Work." The director noted that upon review of the syllabus provided "this training program is best described as introductory and on-the-job training which provides new employees an opportunity to learn and practice this particular type of flying." The director emphasized that since an additional one to two years of practical experience is required to achieve proficiency in the techniques, completion of the training program alone does not constitute specialized knowledge.

The director concluded 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 a skilled worker. The director determined that the evidence of record "only demonstrates employee competence rather than 'specialized knowledge' as contemplated by the regulation.

On appeal, counsel for the petitioner requests reconsideration of the beneficiary's qualifications, and claims that the director erred by requiring the beneficiary's knowledge to be unique as opposed to merely specialized or advanced. Counsel relies on a 1994 legacy Immigration and Naturalization Services (INS) memorandum from then Associate Commissioner [redacted] in support of these claims.

Counsel "does not dispute the fact that the beneficiary has the same knowledge and training as any other pilot that does the same type of work and has completed the same training." Counsel emphasizes that the beneficiary "is not one of a kind and he does not have to be." Counsel states that of nearly 40 pilots employed by the petitioner and the foreign entity, only 10 (including the beneficiary) are at the highest skill level for long line vertical reference work.[2] Counsel reiterates that of 609,737 FAA acknowledged pilots in the United States and abroad "less than one percent of them are similarly licensed."

---

[2] The AAO notes that, in response to the request for evidence, the petitioner listed a total of 16 pilots employed by the petitioner and the foreign entity, 12 of which were identified as Long Line Vertical Reference Specialist Pilots, and 4 of which were identified as line pilots. The AAO is uncertain to which 40 pilots counsel is referring.

Counsel notes that although the director acknowledged that a pilot requires one to two years of additional experience to become proficient after completing the petitioner's training course, the director did not consider that the beneficiary has had four years of additional experience on the job to "fine tune" his skills. Counsel asserts that the beneficiary has specialized knowledge when compared to other pilots as his knowledge is "advanced and different from the other 99% of pilots licensed in the world."

On review, the petitioner has not established that the beneficiary possesses specialized knowledge or that the proposed employment would be 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) and (iv). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's 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)).[3] 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.

---

[3] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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.

Id. at 53.

In the present matter, the petitioner provided a vague description of the beneficiary's duties, and concluded that his knowledge of long line vertical reference flying gained abroad instilled him with specialized knowledge which was carried over into his position in the United States. Specifically, the petitioner relies on the fact that the beneficiary's attendance at the petitioner's training courses after obtaining a commercial pilot's license distinguishes the beneficiary as an employee that is more than merely skilled.

Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained persons in the field and what training he had received from the foreign entity to set him apart from other similarly qualified individuals in the petitioner and the foreign entity, no concrete evidence was submitted. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. Despite counsel's vague explanations in response to the request for evidence, most of which merely repeat the statements deemed insufficient from the initial petition, these claims do nothing to distinguish the beneficiary from any other similarly-trained and educated person who has received training in this specific area of long line vertical reference work. Furthermore, as discussed further below, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon or more advanced compared to similarly trained pilots in the field. 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)).

Moreover, there is no evidence in the record that the beneficiary received any specialized training in a specific product or process of the petitioner, or a specific flying process or procedure implemented especially by the foreign entity and its American counterpart. While the petitioner submits training certificates showing that the beneficiary completed courses identified as FAA Part 133 and FAA Part 135, it appears that these courses are annual training courses offered generally throughout the industry, and not especially by the petitioner. There is no claim in the record that a specialized method or approach is offered by the petitioner which would preclude other persons with these FAA pilot certifications, which lack experience working for the petitioner, from performing the same duties. Moreover, given the highly regulated nature of the industry, it is unlikely that the petitioner has developed its own techniques. The petitioner has failed to show that the beneficiary's period of employment abroad resulted in specialized knowledge of the petitioner's products, processes or other interests which other similarly-trained pilots could not have gained from working in the petitioner's industry in general. Again, however, the major issue is that counsel and the petitioner have failed to support their claims with corroborating evidence. *Id.*

Absent evidence to the contrary, it appears that at best, the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, based on his first-hand exposure to the long line vertical reference techniques, rather than an employee who has unusual duties, skills, or knowledge beyond that of an educated and/or skilled worker. It is reasonable to conclude that the flying technique employed by the beneficiary is not restricted to the petitioner's business alone, and thus other pilots have undoubtedly received the same training. Again, since the petitioner has failed to demonstrate a specific methodology or process of the petitioner of which the beneficiary has obtained specialized knowledge, it is

reasonable to conclude that other similarly trained pilots would achieve the same level of knowledge as the beneficiary by attaining the same pilot certifications and simply working in the petitioner's segment of the piloting industry for an equal number of 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). Counsel argues that the beneficiary's skills, and specifically his knowledge of long line vertical flying and reference work, are extremely important to the petitioner, since they enable the petitioner to compete effectively in the marketplace. While this is one important factor in determining specialized knowledge, this factor alone cannot serve as the basis for the petitioner's claim. Merely asserting on appeal that the beneficiary is valuable to the petitioner's competitiveness in the industry, without discussing any other characteristics or training special to the beneficiary to set him apart from similarly trained persons in the petitioner's industry is insufficient to satisfy the petitioner's burden of proof. Without documentary evidence to support the claim, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Contrary to counsel's arguments, all employees, in general, 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.

The AAO rejects counsel's suggestion that the beneficiary should be compared with "all pilots licensed in the world" in analyzing whether his knowledge is uncommon or different. The petitioner and the foreign entity appear to be almost exclusively engaged in specialty aerial work, specifically long-line vertical reference helicopter charter services. While counsel would apparently have USCIS compare the beneficiary's knowledge with that of every person in the world with any type of FAA-recognized piloting license, the AAO sees no reason to look beyond this specific segment of the commercial helicopter charter services industry in analyzing whether the beneficiary's knowledge is specialized. Clearly, the beneficiary, and all of the petitioner's pilots, and other pilots within the petitioner's industry segment, would possess skills that are different from "all pilots in the world." However, if counsel's argument were followed to its logical conclusion, any pilot who completed long-line vertical reference training, regardless of whether they obtained such training with the petitioner's organization, would be deemed to possess specialized knowledge.

In an attempt to establish that the beneficiary's knowledge is advanced within the petitioner's organization, counsel asserts on appeal that only 25% (10 out of 40) of the petitioner's helicopter pilots, including the beneficiary, "are at the highest skill level for long line vertical reference work." However, this statement appears to contradict information submitted in response to the request for evidence, which indicates that the petitioner and foreign entity together employ a total of 12 "long line vertical reference specialist" pilots and four "line pilots." No other pilots are identified on either organizational chart submitted, so it appears that the petitioner initially represented that 75 percent of its pilots are long line vertical reference specialist. There is no evidence in the record that would distinguish the beneficiary from the other employees who hold the same job title within the petitioner's organization, thus the petitioner has not corroborated its claim that the beneficiary is employed at the "highest skill level." Again, 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)).

Furthermore, the AAO notes that the petitioning organization appears to draw a distinction between its "line pilots" and "long line vertical reference specialist pilots." According to the beneficiary's resume, he was employed by the foreign entity in the apparently lesser position of "line pilot," which raises questions as to whether he possessed the claimed specialized knowledge at the time of his initial transfer to the United States. Counsel references on appeal the beneficiary's "four years of fine tuning" in vertical reference techniques as evidence of his specialized knowledge. However, the beneficiary appears to have completed his vertical reference training in September 2002 and undertook his first assignment in the United States in May 2004, less than two years later. The petitioner has consistently indicated that a pilot needs up to three years to become "truly proficient" in vertical reference work. Therefore, it is not clear that the beneficiary was employed by the foreign entity in a position that involved the claimed specialized knowledge.

Finally, counsel alleges that USCIS is not following its own policy guidelines as to the nature of specialized knowledge. Specifically, counsel asserts that the director erred by requiring the beneficiary's knowledge to be proprietary or unique. *See* Memorandum from [redacted], Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to [redacted] *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*). However, while the petitioner need not establish that the beneficiary's knowledge is proprietary or unique, the knowledge must be different or uncommon. *Id.* The petitioner must still establish that the beneficiary's knowledge meets this lesser, but still high, standard. 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.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's operational procedures and their application in international markets is more advanced than the knowledge possessed by others employed by the petitioner, or in the petitioner's industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his

job in the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel," nor does it establish employment in a specialized knowledge capacity.

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, was not employed abroad in a position involving specialized knowledge, and would not be employed in the United States in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused it discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.