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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 05 252 53095 Office: TEXAS SERVICE CENTER Date: JUN 05 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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Michigan corporation, claims to be an art gallery, auction house, and retail facility. It seeks to temporarily employ the beneficiary as an art auctions instructor specialist in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge 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 determined that the petitioner had not established that (1) the beneficiary had been employed abroad in a specialized knowledge position; (2) the intended employment in the United States required specialized knowledge; or (3) the petitioner maintained a qualifying relationship with a foreign organization.

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 arbitrarily ignored evidence and arbitrarily dismissed the appeal. In support of this position, a brief and additional evidence are submitted.

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 first issue in this matter presents two related, but distinct, questions: (1) whether the beneficiary gained specialized knowledge during his employment abroad and was thus 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 the L supplement to Form I-129, the petitioner explained that the beneficiary obtained a Bachelor's Degree in Fine Arts from Florida International University, and that he had served as an Art Auctioneer Instructor Specialist for the petitioner since December 2002. The petitioner also provided the following overview of the beneficiary's position for the past three years:

> [The beneficiary] has been providing auction services for [the petitioner's] art auctions as an Art Auctioneer abroad since December 2002. In providing services on cruise ships for art auctions for [the petitioner's] collections, [the beneficiary] has been required to be fully knowledgeable about the broad range of art offered for sale and [the petitioner's] auction procedures. [The petitioner] manages the activities of its Art Auctioneers onboard cruise ships. Since 1994, [the petitioner] has maintained a presence on these cruise ships and provides each Art Auctioneer with accommodations, office space, several computers, in-house [Point-of-Sale auction software of the petitioner], promotional items, and any other materials necessary to carry out our art auctions.
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> While providing services for [the petitioner's] art auctions abroad, [the beneficiary] has complied with our high standards of professionalism and has met [the petitioner's] sales expectations. He has related [the petitioner's] artwork in a way others can easily understand. He has exhibited exceptional knowledge at [the petitioner's] previews, in which an Auctioneer explains the piece of art, its history, and the artistic merit found within the piece. [The beneficiary] has a keen knowledge of fine art history and application promoted by [the petitioner]. He also has inside knowledge of the procedures, practices, methods, policies, marketing strategies, terminologies, and other advanced knowledge of intricate details of [the petitioner's] operations. He has substantial knowledge of [the petitioner's] promoted classical art and of contemporary and modern artists' normal dealings with [the petitioner]. He has the ability to deal not only with artists, art dealers, merchants, and auctioneers of close contact with [the petitioner], but with interested members of the public who are familiar with us.
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> While providing auction services for [the petitioner], [the beneficiary] has both managed and developed original sales promotion programs. Such programs include scripting, broadcasting and appearing in daily television programs, and generating printed sales materials. He has also developed conferences, delivered speeches, and participated in other various cross-promotional events for [the petitioner's] benefit. [The beneficiary] conducts up to five auctions per week, along with private showings, for the benefit of [the petitioner]. He collaborates with hotel management on shipboard displays, personally selecting positioning of individual pieces. [The beneficiary] has achieved an outstanding sales record through his

> innovative presentation methods, his original advertising ideas, and his generation of sales programs. He is very skilled in conducting [the petitioner's] business dealings, negotiations, and pricing.

The petitioner also provided the following detailed overview of the beneficiary's proposed duties in the United States on the L supplement to Form I-129:

> As an Art Auction Instructor Specialist, [the beneficiary] will train Art Auctioneers in the U.S. on crucial auctioneering skills such as calling bids, knowledge of the rules of reserve, skills of negotiations, artistic expressions, speech skills, and knowledge of pricing. He will also train them in administrative work and necessities that go along with conducting an art auction at sea, such as the use of [the petitioner's] in-house Point of Sale (POS) art auction software, which allows auctioneers to access [the petitioner's] databases from anywhere in the world.
>
> [The petitioner] provides managerial oversight for the Art Auctioneers at sea. Due to the nature of cruising in international waters, they are sometimes isolated and out of communication with [the petitioner] in the U.S. Art Auctioneers must therefore be trained exceedingly well so that they are capable of dealing with every possible situation associated with an art auction. The skills that must be taught include the ability to review and interpret to potential buyers the artworks to be exhibited, how to deal with bidders, how to prepare and complete auction paperwork, and how to deal with customs officials throughout the world, and anything else that might need to be done on these unique environments.
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> [The beneficiary] will also be responsible for preparing Auctioneers to promote our auctions and generally making sure that Auctioneers are able to see to it that an auction ends with a successful conclusion of the transaction and are capable of providing assistance so that the product can leave the ship anywhere in the world. He will train Auctioneers, following [the petitioner's] techniques and procedures, on how to best visually organize their artistic materials in a way that is eye-catching and organized, as well as conducive to the best profit and satisfaction of the exhibition customers.
>
> The auction business, particularly when held on a cruise ship in international waters, contains many subtle nuances and pitfalls. [The beneficiary], through his nearly three years of experience with [the petitioner], has identified and mastered these peculiarities, which is why it is our desire to utilize [the beneficiary's] experience in the Art Auctions Instructor Specialist position so that he can impart his specialized knowledge to other auctioneers.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge and would be employed in the United States in a position that required specialized knowledge. Consequently, a detailed request for evidence was issued on September 26, 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 evidence showing that the beneficiary's knowledge of the petitioner's processes and procedures was different from elementary or basic knowledge possessed by others in the industry. In addition, the director posed some direct questions pertaining to the petitioner's employees, including the number of other art auction instructor specialists employed by the petitioner, the number of employees trained to conduct auctions at sea, and the number of employees currently working in this capacity for the petitioner.

The petitioner responded on November 29, 2005. The petitioner submitted an undated statement from [redacted], the petitioner's gallery director, which addressed the director's specific questions regarding the petitioner's employees. [redacted] indicated that the petitioner currently employed six persons in the position of "Art Auctions Instructions Specialist" worldwide. Additionally, he indicated that currently, there were 200 individuals currently being trained as art auctioneers, and noted that this number also included those providing auctioneering services during their training. Finally, [redacted] indicated that in the near future, or more specifically, within the next three years, the petitioner would train 500-600 people worldwide to become art auctioneers.

The petitioner also submitted a statement dated October 28, 2005, prepared by [redacted], the petitioner's chief financial officer, which attempted to explain the manner in which the beneficiary's knowledge was more advanced than the knowledge others commonly possessed throughout the industry. The statement provided that:

> Our auctioneers (aside from their instructors) are required to be knowledgeable in [the petitioner's] advanced inventory control systems, in our auction processes and techniques, and our pricing technology, while mastering the ability to hold formal auctioneer gatherings. In addition, the auctioneer must also be familiar with the rules and regulations related to the various cruiselines. All of those abilities have to be harmonized with the knowledge of art history and trends, details about the artists' styles and techniques, and the ability to blend all of this information together in an auction performance in international waters, on their own, without any available surrounding help. One can therefore imagine the very advanced and unique skills that the instructor for such art auctioneers must possess. Obviously, the person who trains those auctioneers must himself possess an even greater, more advanced level of such specialized knowledge.

A letter from counsel dated November 29, 2005 further outlined the training the beneficiary provided to the petitioner and the training that he in turn would offer in the United States. Counsel explained that the training was threefold: (1) classroom training, lasting approximately two to four weeks; (2) hands-on training, where auctioneers in training are rotated between cruise ships from three days to two weeks to observe and assist professional sales and auctioneering staff; and (3) proprietary computer systems training, which is taught via hands-on training and classroom instruction, in the petitioner's alleged proprietary system for inventory analysis and sales forecasting. Counsel also submitted outlines of the petitioner's training programs in support of these statements.

The petitioner also relied on a March 9, 1994 Guidance memorandum from James A. Puleo, Acting Executive Associate Commissioner, re-affirmed by a memorandum from Fujie Ohata, Associate Commissioner for Service Center Operations dated December 20, 2002. Specifically, the petitioner asserts that the characteristics outlined in the memorandum are clearly possessed by the beneficiary.

Upon review of the evidence submitted, the director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of art auctions instructor specialist required an employee with specialized knowledge as defined by the regulations. 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 working for the petitioner and concluded that the beneficiary did not hold a "key personnel" position with the petitioner. On appeal, counsel for the petitioner contends that the director implemented improper standards during adjudication and that the evidence submitted clearly shows that the beneficiary's knowledge of the critical aspects of the petitioner's business is specialized and advanced.

On review, the record does not contain sufficient evidence to establish that the beneficiary was employed abroad in a specialized knowledge capacity, 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). 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 description of the beneficiary's employment for the past three years as well as his proposed responsibilities in the United States. However, despite this detailed overview, the petitioner failed to provide evidence regarding what exactly set apart the beneficiary's knowledge from other similarly trained auctioneers in the field and what training he had received to set him apart from other similarly qualified individuals working for the petitioner and in the industry in general. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. In fact, the overview of duties and the statements of the petitioner and counsel suggest that the beneficiary occupies one of six positions, and that since the petitioner intends to train 500-600 auctioneers within the next three years, the beneficiary's position will be one of many. The petitioner provides no additional information as to why none of the other five art auction instructor specialists could perform the same duties.

Despite counsel's contention on appeal that the beneficiary possesses specialized and advanced knowledge of the petitioner's proprietary computer systems as well as specialized knowledge of art history and the art industry in general, there is insufficient evidence to conclude that these factors alone attribute him with specialized knowledge. The record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals working for the petitioner and in the field in general.

Furthermore, despite the documentation of the training provided to art auctioneers by the petitioner, it does not appear that this training is so unique that other auctioneers in the industry with a degree in fine arts could not feasibly be trained to perform the same duties as the beneficiary. For instance, the petitioner claims that classroom training requires two to four weeks of instruction, whereas hands-on training can be as little as three days. It seems inconceivable that such a short period of training renders the beneficiary's knowledge so advanced that others in the industry cannot perform the same or similar duties. While it is understood that the beneficiary's training, combined with his three years of experience in the industry, form the basis for the petitioner's contention that he possesses specialized knowledge, no comprehensive evidence to establish that the beneficiary's qualifications are so specialized or advanced that few others compare to him for purposes of this analysis. Moreover, the beneficiary's purpose for coming to the United States is to train other similarly-qualified persons to perform the same auctioneering duties that he performs abroad, thereby indicating that the positions in both the foreign entity and the United States are simply that of "art auctioneer," a position filled by multiple employees of the petitioner.

The claim that the beneficiary allegedly received specialized and advanced knowledge of the petitioner's allegedly proprietary computer systems, without specific documentation explaining the manner and nature of this training, is subject to scrutiny. Although the petitioner claims that this system is proprietary to the petitioner, no evidence to support this claim has been provided. 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)). Although the beneficiary has worked abroad for the petitioner since

December 2002, there is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something unique to the petitioner which other similarly-trained persons could not have gained from working in the industry in general.

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 art auctioneers in the industry. More importantly, no documentation distinguishing him from the other art auction instructor specialists employed by the petitioner has been submitted. Finally, no evidence that the beneficiary exclusively received training in a computer system that was proprietary only to the petitioner has been submitted.[1]

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 that the beneficiary possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. 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.

Furthermore, the petitioner fails to specifically clarify how the beneficiary possesses specialized knowledge of a methodology, application or process of the petitioner merely by being familiar with art and art history and the auctioneering process in general. Although the petitioner claims that the beneficiary received training from the petitioner regarding its gallery procedures, no evidence to support a finding that the petitioner's practices are so different from other art galleries in the industry. It has also not been proven that the petitioner is the only employer of art auctioneers for cruise ships, thereby leaving open the possibility that there are many other similarly trained auctioneers working for various cruise lines that have identical training and experience as the beneficiary. Absent evidence to the contrary, there is nothing to suggest that other similarly-qualified persons in the industry are not equally familiar with these procedures. Although the petitioner does claim that a fundamental part of the training for its employees is in its proprietary computer system, there is insufficient evidence describing the nature of this system, the length of time it has been in use, or the manner in which employees receive training in this system. There is no indication in the record that a similarly-trained person, with a degree in fine arts and three years of experience with the petitioner, is not equally familiar with these computer applications as well as the auction procedures used by the petitioner and could not perform the same duties. The fact remains that the record does not demonstrate that the beneficiary possesses specialized knowledge of any process or methodology exclusively used and implemented by the petitioner as claimed. While his extensive familiarity with the petitioner's gallery procedures and the art industry in general certainly makes him a valuable asset to the company, there is nothing to suggest, other than a brief claim in the response to the request for evidence, that the beneficiary

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[1] 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).

acquired specialized knowledge of any unique or proprietary methodologies or procedures in the three years he has worked for the petitioner. There is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something unique to the petitioner which other similarly-trained persons could not have gained from working for the petitioner or in the industry in general.

In this case, the petitioner and counsel rely on the AAO to accept its uncorroborated assertions that the beneficiary possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad, both prior to adjudication and again on appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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)).[2] 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 documentary evidence demonstrating the nature in which he acquired specialized

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[2] 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.

skills that set him apart from others 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 he is one of six persons occupying the same position within the petitioner, and will inevitably help train 500-600 people for this role in the next three years. It is not unreasonable, therefore, to conclude that other similarly trained persons in the auctioneering sector have also become familiar with the cruise ship auctioneering business and the petitioner's computer systems. Again, since the petitioner has failed to demonstrate a specific methodology or process unique to the petitioner of which the beneficiary has obtained specialized knowledge, it is reasonable to conclude that other similarly trained persons could achieve the same level of knowledge as the beneficiary by simply working as an art auctioneer in the industry for three 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 "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Contrary to counsel's objections on appeal, 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 claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation that the alleged hands-on experience he received in three years made him an expert in the field. 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 petitioner may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the *organization's* process and procedures or a "special knowledge" of the *petitioner's* product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). Mere familiarity with the sector in general does not constitute specialized knowledge for purposes of this matter. As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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 was not employed abroad in a specialized knowledge capacity, does not possess specialized knowledge, and will not be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as 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; and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides in pertinent part:

(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, or

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this matter, the petitioner claims that the beneficiary has been employed abroad by Park West at Sea, which it claims on the Form I-129 is its affiliate. The director found the initial evidence in the record to be insufficient to establish that a qualifying relationship existed between the entities, and requested more information and documentation in the request for evidence issued on September 26, 2005. In counsel's response to the director's request dated November 29, 2005, the following statements were provided:

> Kindly note that much of the operation of [the petitioner] in international waters is conducted under the name "Park West at Sea"; however, the legal entity is the same, as Park West at Sea is merely an assumed name to be used under Michigan law for the corporation. Otherwise, it is the same legal entity operating within the United States as [the petitioner], as the one operating outside the U.S. as "Park West at Sea."
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> As explained above, there really is no foreign entity, as Park West at Sea is the same entity as [the petitioner].

The director denied the petition on the basis that there was no foreign entity by which the beneficiary had been employed and, therefore, there could be no qualifying relationship as required by the regulations. On appeal, counsel alleges that "there is no need to show a qualifying relationship when it is the same company operating outside the U.S." While the AAO agrees with this general statement, the petitioner in this matter has failed to establish its overseas operations.

The regulations governing the issuance of L-1 visas are intended to facilitate the transfer of employees working for a parent, branch, subsidiary, or affiliate of the U.S. entity to the United States for a temporary period. Based on this premise, the critical factor to be examined is whether one of these key relationships has been established.

The evidence contained in the record indicates that the petitioner in this matter is a Michigan corporation incorporated in 1970. The petitioner provides for the record a document entitled "Certificate of Assumed Name," dated April 14, 1995, which indicates that the petitioner will also transact business under the assumed name of "Park West at Sea." The record further indicates that the petitioner will operate art auctions and manage galleries on multiple cruise lines and cruise ships, including Carnival, Holland America, and Norwegian Cruise Lines.

Given the admission that there is no foreign entity, the only remaining means by which the petitioner could claim a qualifying relationship is through a branch office's operations. In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). Citizenship and Immigration Services has recognized that the branch office of a foreign corporation may file a nonimmigrant petition for an intracompany transferee. *See Matter of Kloetti*, 18 I&N Dec. 295 (Reg. Comm. 1981); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm. 1971); *Matter of*

Schick, 13 I&N Dec. 647 (Reg. Comm. 1970); *see also Matter of Penner*, 18 I&N Dec. 49, 54 (Comm. 1982)(stating that a Canadian corporation may not petition for L-1B employees who are directly employed by the Canadian office rather than a United States office). When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. *Matter of Schick, supra* at 649-50.

Likewise, a United States company may file a nonimmigrant petition for an intracompany transferee who has been employed abroad by a branch office of the company, provided that the foreign branch office meets these same requirements in the country or countries in which it operates. Generally, probative evidence of a foreign branch office would include the following: a business license establishing that the petitioner is authorized to engage in business activities in the country in which it claims to operate; copies of U.S. and foreign tax returns and wage reports; copies of a lease for office space in a foreign country; and finally, any relevant local tax forms or documents that demonstrate that the petitioner is a branch office of a U.S. entity. Specially in this matter, given the claim that the branch offices operate out of and on board cruise ships, the petitioner is also required to establish the following: where the business is actually conducted, i.e., in a U.S. port, in a foreign port, on a U.S. owned and flagged ship while on the high seas, or on a foreign owned and flagged ship while on the high seas; that the business conducted is regular, systematic, and continuous; and that the necessary facilities and office space has been secured from the cruise ships on which the petitioner operates.[3]

Despite counsel's claims that the cruise ships travel to foreign ports and thereby prove that the beneficiary has been employed abroad as required by the regulations, this claim is insufficient to satisfy the burden of proof in this matter. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. Again, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As noted above, the regulation at 8 C.F.R. 214.2(l)(1)(ii)(G)*(2)* defines "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which "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. As the petitioner has not provided sufficient evidence that it does business through a branch office in at least one other country other than the United States, it has failed to establish that it has a qualifying relationship with a branch office or other entity abroad. As a result, the petition may not be approved.

While not directly addressed by the director, the record does not contain sufficient evidence that the petitioner or the foreign entity are engaged in the regular, systematic, and continuous provision of goods and/or services. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include

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[3] While ships on the high seas are treated as parts of the nation to which they belong, and whose flag they fly, a ship in port is subject to the law of that port. *See The Cuzco*, 225 F. 169, 175-176 (W.D. Wash. 1915). Therefore, it is necessary for sufficient details to be provided on the claimed foreign business operation to evidence whether it is truly being conducted in at least one other country. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*).

the mere presence of an agent or office of the qualifying organization in the United States and abroad." In this matter, despite the petitioner's claims that both entities operate art auction houses and retail venues, no evidence showing the sale or auction of goods has been presented. The regulation at 8 C.F.R. § 214.2(l)(3)(i) requires evidence that the petitioner and the foreign entity submit evidence that they are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The petitioner has failed to submit evidence that the two entities are doing business. For this additional reason the petition may not be approved.

Finally, the evidence in the record is unclear with regard to the beneficiary's actual employer, and whether he serves as an employee or an independent contractor. Although not addressed by the director, this raises the question of whether the beneficiary has actually been *employed* by a qualifying organization for one full year out of the three years immediately preceding the filing of the petition. *See* 8 C.F.R. §214.2(l)(3)(iii). Furthermore, it is unclear who will be his employer when he enters the United States.

Specifically, the Policy and Procedure Manual submitted into evidence indicates that the beneficiary is actually an independent contractor, not an employee. Specially, subsection 7 of section 5, which is entitled "Art Auctioneer Job Description," states that: "[i]n addition to these prior specifics from the cruise lines, t is important to remember that the Art Auctioneer is bound by all terms in the Independent Contractor (IC) Agreement signed by him/her." It is noted that the beneficiary an IC agreement is required between the beneficiary and each cruise line to which he will render his services. However, no copies of these agreements have been submitted. With regard to the director's request for evidence of wages paid to the beneficiary, the petitioner responded by stating that W-2 forms were not required and that the beneficiary was paid by "intermediaries." In addition, the petitioner claimed that the majority of his compensation came directly from sales art auctions on board the ship, which directly contradicts the petitioner's claim on Form I-129 which states that the beneficiary received an annual salary of $60,000 per year plus company benefits.

Absent evidence of wages paid to the beneficiary and the source of such wages, the AAO cannot determine whether the beneficiary was actually employed by the petitioner for one full year out of the three years immediately preceding the filing of the petition. In addition, it is unclear to whom the beneficiary will render his services in the United States. 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)). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if 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.