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U.S. Citizenship and Immigration Services

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[redacted]

File: LIN 06 124 51939 Office: NEBRASKA SERVICE CENTER Date: OCT 02 2007

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a corporation registered in the State of Alaska, claims to be engaged in specialty aerial work and the operation of an air taxi service. It seeks to extend the temporary employment of the beneficiary as a helicopter pilot 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 beneficiary was initially granted a two-year period of stay in L-1B classification to work in the petitioner's new office and the petitioner now seeks to extend his status.

The director determined that the petitioner had not established that (1) a qualifying relationship existed between the petitioner and the foreign employer; (2) the beneficiary possessed specialized knowledge; or (3) the intended employment in the United States required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel claims that the director's decision was erroneous, and submits arguments in support of the petitioner's claimed compliance with the regulatory requirements.

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.

The first issue in the present 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:

(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 case, the petitioner claims that the U.S. entity is the subsidiary of the foreign employer, Prism Helicopters Ltd., located in British Columbia, Canada. In support of this contention, the petitioner claimed on the L Classification Supplement to Form I-129 that the foreign entity owned 49% of the petitioner.

In a letter from counsel dated March 7, 2006, more details regarding the petitioner's ownership were supplied. Specifically, counsel stated that the foreign entity owned 49% of the petitioner, and [redacted] president of the petitioner, owned 51%. With regard to the foreign entity, counsel stated that it "directs and makes all major decisions affecting [the petitioner], including financial, accounting and payroll administration."

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

[redacted]	510 Voting Shares
	120 Voting Shares
	370 Non-Voting Shares

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]

Counsel responded on July 7, 2007. In response to the director's request, 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 FAA requirements, and that overall control of the petitioner would be maintained by [redacted], sole owner of Prism Canada. The agreement further indicates that when [redacted] attained U.S. citizenship, all shares and voting stock would be transferred to Prism Canada.

Upon review of the evidence submitted, the director concluded that the record was insufficient to support a finding that the foreign entity owned and controlled the petitioner, such that a parent-subsidiary relationship existed. The director subsequently denied the petition on August 15, 2006. The petitioner appealed the decision, asserting that the control agreement submitted in response to the request for evidence clearly established that the foreign entity controlled the petitioner.

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

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 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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the foreign entity.

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 control 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 fact that 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.

Based on the evidence presented, it is concluded that the petitioner and the foreign entity did not maintain a parent-subsidiary relationship as of the filing date of this petition, and thus did not have a qualifying relationship as required by the regulations.

The second issue in this matter presents two related, but distinct, issues: (1) whether the beneficiary possessed specialized knowledge as a result of 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 a letter from counsel dated March 7, 2006, the petitioner advised that the beneficiary had been employed for over five years in the industry. The petitioner claimed that the beneficiary possessed a Canadian commercial pilot's license, had received certificates for participating in numerous specialty training courses, and held certificates for several ratings. The certificates provided indicate that the beneficiary completed training in numerous programs such as pilot decision-making and transportation of dangerous goods, programs which appeared to be recurring requirements for pilots to maintain their Canadian licenses. Regarding his specialized knowledge, counsel stated:

> [The beneficiary] will continue to temporarily perform the duties of long line helicopter pilot. [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 2000. [The beneficiary] is specially endorsed with [redacted]

Counsel further stated that in the three years preceding the filing of the petition, the beneficiary was employed abroad in Canada as a helicopter pilot specializing in fire fighting applications, seismic, and international work.

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 April 18, 2006, which requested evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Specifically, the director requested documentary evidence of what exactly the beneficiary possessed specialized knowledge, including a more detailed description of the beneficiary's special or advanced duties. The director also requested information pertaining to the petitioner's other employees, specifically those who occupied the same or similar positions to that of the beneficiary. Furthermore, the director requested information regarding the training the beneficiary has received.

In response to a request for additional evidence that the beneficiary possessed specialized knowledge and that the proffered position required specialized knowledge, counsel explained that long line vertical reference specialty flying is unusual and distinct, and that not all helicopter pilots are able to perform such a task. The petitioner also submitted documentation regarding two training courses in the area of long line vertical flying, which the petitioner provided to its pilots. According to the documentation provided regarding these courses, which were labeled as "recruitment courses," the beneficiary and other similarly trained pilots would be required to repeat these courses once per year. The petitioner further explained that not all commercial pilots possessed the ability to perform this type of flying. Finally, counsel indicated that of the 609,737 FAA acknowledged pilots in the United States and abroad, less than one percent of them are similarly licensed as the beneficiary. A commercially licensed pilot, according to counsel, must obtain an additional 500 hours of training to be licensed to fly for a commercial operation carrying passengers, such as the petitioner's operation.

On August 15, 2006, the director denied the petition. The director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of helicopter pilot with the petitioner required an employee with specialized knowledge as defined by the regulations. The director specifically noted that, while the beneficiary's position certainly required a skilled pilot, the record contained no evidence that other similarly trained professionals in the industry could not perform the same duties. The director concluded that the petitioner had failed to show that the beneficiary possessed special or advanced knowledge of a product, process or procedure specific to the petitioner, or that the beneficiary's knowledge gained as a result of his employment abroad was uncommon or noteworthy in comparison.

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 James A. Puleo in support of these claims.

The AAO disagrees. On review, the record does not contain sufficient evidence to establish 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.*

In the present matter, the petitioner provided a vague description of the beneficiary's duties, and concludes 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 industry, 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, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon or more advanced compared to similarly trained professionals in the field. Despite the petitioner's claim that only a small percentage of FAA recognized pilots are trained in this area, no documentation to support this claim has been submitted. 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 training in the field of helicopter piloting, which lack experience working for the petitioner. The petitioner has failed to show that his 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 industry in general. Again, however, the major issue is that counsel and the petitioner have failed to support their claims with corroborating evidence. *Id.*

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 for one year in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* The petitioner's failure to provide sufficient evidence of the beneficiary's training and experience renders it impossible to conclude that the beneficiary's employment abroad or in the United States requires specialized knowledge.

Moreover, counsel alleges that CIS 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* Memo. from [redacted] Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *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.* As discussed above, the petitioner has not established that the beneficiary's knowledge meets this lesser, but still strict, standard. On appeal, counsel simply restates the previously submitted description of the beneficiary's duties and the knowledge they require and asserts that, since the beneficiary is one of ten out of forty pilots who possesses knowledge of long line vertical reference work, he has consequently satisfied the definition of specialized knowledge. Additionally, prior to adjudication and again on appeal, the petitioner alleges that the beneficiary's knowledge is valuable to the petitioner's productivity, competitiveness, and financial position. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. 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). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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

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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.

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 is minimal and severely restricts the AAO from drawing any reasonable conclusions about the beneficiary's qualifications. However, 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 similarly trained pilots are present in the United States and undoubtedly have 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 could achieve the same level of knowledge as the beneficiary by attaining the same education and simply working in the 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 [redacted]. As discussed above, counsel's main argument is 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 unique or 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. On appeal, counsel asserts that 25% (10 out of 40) of the petitioner's helicopter pilots are trained in the manner of the beneficiary. 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 claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation that the alleged training and on-the-job experience he received abroad rendered him uniquely or especially skilled in the area claimed. Therefore, 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. While the beneficiary's contribution to the success of the company 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 skill or knowledge in 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 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.