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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

File: WAC 07 204 50511 Office: CALIFORNIA SERVICE CENTER Date: AUG 0 1 2008

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)

IN 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, California 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 filed this nonimmigrant petition seeking to employ the beneficiary in the position of "quality liaison engineer" as an L-1B 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 petitioner, a Delaware corporation, describes its business in the Form I-129 as "engineering and commercial services for foundry products supplier." The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish (1) that the beneficiary was employed abroad in a capacity involving specialized knowledge; or (2) that the beneficiary has specialized knowledge of the petitioning organization's products or processes.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been employed in a specialized knowledge capacity and that the beneficiary has specialized knowledge of the petitioning organization's "foundry manufacturing process and resolution of foundry-casting defects."

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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 primary issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad in a specialized knowledge capacity and whether the beneficiary has specialized knowledge of the petitioning organization's products or processes. 8 C.F.R. § 214.2(l)(3)(ii) and (iv).

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

> 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 petitioner describes the beneficiary's duties abroad in the Form I-129 as follows:

> [The beneficiary] currently serves as Quality Engineer with [the foreign employer]. In this position he serves as the direct contact between engineering and quality departments on issues involving [the petitioning organization's] castings. He is responsible for co-design activities with the customer's engineering department, participating in product development teams, to allow for the proper design of castings within the customer's product environment. This includes analyzing engineering changes proposed by the customer and preparing reports on the customer's product applications. He also prepares technical forecasts related to future development of products. He has held this position since April 2007.
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> Prior to this, from October 2005 through April 2007, [the beneficiary] served as Quality Coordinator with [redacted], also owned by [redacted]. He was responsible for overseeing the quality assurance of Pipe Fittings, Flanges, and Nipples commercialized by [redacted] This includes following up on the procedures and tests to approve new product development, overseeing quality control of the machining process of Fluida Pipe Fittings, and coordinating the packing and repair of damaged or non-conforming parts.

The petitioner also describes the beneficiary's proposed duties in the United States in the Form I-129 as follows:

- Responsible for the direct contact with engineering and quality departments/labs of Caterpillar regarding any applicable communication with [the petitioning organization's] Technical Departments in Mexico and with [the petitioner's] customer service function in Auburn Hills, MI. This activity also involves meetings, video and teleconferences with

multi-company teams;

- Responsible for the co-design activity with the Customer Engineering, participating of [sic] product development teams, to allow the proper design of castings within the Customer's product environment;
- Analyzes the engineering changes proposed by the Customer Engineering/Purchasing in order to give suggestions while discussing the matters; and submits them to [the petitioning organization's] Commercial department for estimate on costs and other required price changes related to the changes;
- Participates of [sic] 6-Sigma joint programs ([the petitioning organization]-Caterpillar) to improve quality of supplied engine blocks and heads, as well as to lower the associated quality costs;
- Reports on Customer product applications and technical forecasting related to future developments of products/applications of products, to enable the Commercial department to conduct basic marketing discussions;
- Follows up the procedures and tests to approve or homologate samples/prototypes/pilot lots;
- Follows up the machining of [the petitioning organization's] castings at Caterpillar – Mossville, IL plant when needed, identifying foundry defects and sending quality performance reports to [the petitioning organization's] Quality Engineering. Coordinates the repair of damaged or non-conforming parts;
- Responsible for searching and developing local sources to provide services of transportation, casting rework/salvage and screening of parts with defect or considered non-conforming;
- Supports [the petitioning organization's] Commercial and Logistics Departments.

Finally, the petitioner describes the beneficiary's quality assurance and engineering training in a letter dated June 18, 2007 as follows:

- ISO TS-16949 Interpretation
- Advanced product quality planning APQP
- Automatic centrifugal casting machines
- Failure mode and effect analysis (FMEA)
- Auditors formation
- Iron and Steel Metallurgical
- Metallurgical and materials international Congress Instituto Technologico Saltillo, XXI, XXII, XXIII, XXIV
- Industrial software application
- Clean Technologies
- Aluminum technology
- Materials Engineering
- Knowledge administration

On July 6, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence that

the beneficiary possesses knowledge above that which is normally possessed by other workers in the beneficiary's field of endeavor. The director also requested that the petitioner submit evidence establishing that the beneficiary's knowledge is related to the petitioning organization's products or processes and not to the products or processes of its client, Caterpillar.

In response, the petitioner submitted a letter dated September 12, 2007 in which the petitioner further describes its relationship with Caterpillar and the beneficiary's purported specialized knowledge as follows:

> [The petitioning organization] has a contract with Caterpillar Inc[.] to supply engine blocks and heads [citation omitted] in the "as cast" state. This means that after they are delivered from the [petitioning organization's] foundry to the Caterpillar plant in Mossville [Illinois], the parts must be machined at this facility before the engine can be built. The machining process involves small-scale cutting and drilling and other minor modifications to the parts to ensure they fit together smoothly for engine assembly, with the correct tight tolerances. During the machining process defects which are caused by the casting process at our foundry in Mexico appear sub-superficially. The Qualify Liaison Engineer is needed on-site at the Caterpillar plant to guarantee that any production quality issues revealed during the machining process are quickly and successfully resolved so that Caterpillar does not experience major inconvenience to the machining lines caused by the products [the petitioning organization] is supplying. In other words, the Quality Liaison Engineer is there to resolve any problems that might be attributable to [the petitioning organization's] casting or production, so that our customer – Caterpillar – remains satisfied with [the petitioning organization] as a supplier.
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> * * *
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> The specialized knowledge we are talking about for the Quality Liaison Engineer is knowledge of the foundry manufacturing process and resolution of foundry-casting defects.
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> * * *
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> [T]he Quality Liaison Engineer must have advanced knowledge of [the petitioning organization's] foundry production system (including the design of tooling from 3D mathematical models and the metals used in the casting process), quality standards as applied to the manufacture of engine parts, and the processes for identifying and resolving production defects that appear during the machining process.
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> * * *
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> An engineer lacking [the beneficiary's] background would be unable to perform this job. Because there are no independent large series diesel engine foundries in the United States, and because someone unfamiliar with [the petitioning organization's] system for designing engine parts, procuring materials, and creating castings would be slow and ineffective in

> identifying and resolving problems, we cannot simply hire and train another engineer to fill this position. The Quality Liaison Engineer must understand the product specifications and technical requirements of the engine parts produced for Caterpillar. In addition, because the position involves managing industrial production processes – including quality control, inventory control, materials flow and logistics, and the work of other engineers – experience or training in industrial processes is necessary. [The beneficiary] has this specialized knowledge from his years of experience in quality control with our affiliates in Mexico and his numerous courses in manufacturing processes.

On October 9, 2007, the director denied the petition. The director concluded that the petitioner failed to establish (1) that the beneficiary was employed abroad in a capacity involving specialized knowledge; or (2) that the beneficiary has specialized knowledge of the petitioning organization's products or processes. The director determined that the beneficiary instead appears to have knowledge, even if specialized, relating to the petitioner's customer, Caterpillar, and not to the petitioning organization.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been employed in a specialized knowledge capacity and that the beneficiary has specialized knowledge of the petitioning organization's "foundry manufacturing process and resolution of foundry-casting defects."

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary was employed abroad in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* **8.C.F.R. § 214.2(l)(3). The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge.** In this matter, the petitioner fails to establish that the foreign position required an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's position in Mexico requires "specialized knowledge" and that the beneficiary has been employed abroad in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced and educated engineers employed by the petitioning organization or in the industry at large. Going on record without 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioning organization's "foundry manufacturing process" and the "resolution of foundry-casting defects" as this knowledge relates to

the provision of engine blocks and heads in the "as cast" state to the petitioner's customer, Caterpillar. However, despite this claim, the record does not establish how, exactly, the beneficiary's knowledge of the petitioning organization's foundry manufacturing and defect resolution process in the context of manufacturing diesel engine parts to Caterpillar's specifications is so materially different from the manufacture of "as cast" parts at foundries in general that a similarly experienced and educated engineer employed by the petitioning organization or at other foundries, both those which produce parts for diesel engines and those which do not, could not perform the duties of the position. The petitioner never establishes the difference between the petitioner's products, processes, and procedures and those products, processes, and procedures related to other foundries which requires noteworthy or uncommon knowledge not possessed generally by similarly educated and experienced engineers. The fact that the record indicates that the beneficiary only began working with the petitioning organization's diesel related division approximately three months prior to the filing of the instant petition significantly undermines the petitioner's claim that the knowledge necessary to do the beneficiary's job in Mexico is not shared generally throughout the industry by similarly employed engineers.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by engineers experienced in manufacturing parts in foundries generally throughout the industry or by other employees of the petitioning organization. The fact that few other engineers possess very specific knowledge of certain aspects of the design and specifications of the parts being made for Caterpillar does not alone establish that the beneficiary's knowledge is indeed uncommon or noteworthy. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be imparted to another similarly educated and generally experienced engineer without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's product do not establish that any knowledge of it is "specialized" or "advanced." Rather, the petitioner must establish that qualities of the product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other engineers may not have very specific, proprietary knowledge regarding the petitioner's product, or its inspection, is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced engineer with a background in foundry processes and procedures.

Furthermore, while the petitioner asserts that the beneficiary acquired his purported "specialized knowledge" through both work experience and formal training, the record is not persuasive in establishing that either of these methods truly imparted "specialized knowledge" to the beneficiary. First, the record is devoid of persuasive evidence establishing that the beneficiary's experience with the petitioning organization abroad instilled him with specialized knowledge. The petitioner fails to explain what specific knowledge of the foundry manufacturing process is uncommon or to establish how long it would take to impart this knowledge to a similarly employed person and under what conditions.

Second, the record is not persuasive in establishing that the training courses listed in the record imparted specialized knowledge to the beneficiary. The training regimen outlined by the petitioner does not appear to relate specifically to the beneficiary's purported specialized knowledge. To the contrary, this training appears to relate generally to casting, metallurgy, and engineering and more likely than not imparted knowledge

common to engineers employed by foundries. Absent evidence establishing that the knowledge imparted by the training sessions is not possessed by other similarly employed workers, the knowledge gained would not be uncommon, advanced, or noteworthy.

It is noted that both the director's decision and the Request for Evidence could be interpreted as requiring the petitioner to establish that the knowledge in question is "proprietary" to the petitioning organization in order to establish that the beneficiary possesses specialized knowledge. Counsel argues on appeal that a product need not be "proprietary" to a petitioner in order for knowledge of this product to be "specialized." *See* Memorandum from [redacted] Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). The AAO agrees with counsel that the petitioner was not obligated to establish that the product or process in question was "proprietary" in order to establish that the beneficiary's knowledge of the product or process constitutes "specialized knowledge," and the director's decision will be withdrawn to the extent that the director's decision imposes a requirement to establish that the knowledge is "proprietary." However, as noted above, the petitioner nevertheless failed to establish that the beneficiary's knowledge constitutes "specialized knowledge" because it has not been established that beneficiary's knowledge is substantially different from the knowledge possessed by foundry engineers generally throughout the industry or by other employees of the petitioning organization. Crucially, the petitioner never establishes the material difference between the pertinent products and manufacturing processes and other products made at foundries, which requires noteworthy or uncommon knowledge not possessed generally by similarly employed engineers. The fact that the knowledge is proprietary, or not, is largely irrelevant to the analysis.

Beyond the decision of the director, even assuming that the beneficiary has "specialized knowledge" as defined by the Act and regulations, the petitioner has failed to establish that the beneficiary was employed in a specialized knowledge capacity abroad for at least one year. 8 C.F.R. § 214.2(l)(3)(iv). The petitioner asserts that the beneficiary began working for his current foreign employer in April 2007. Prior to April 2007, the petitioner claims that the beneficiary worked for an affiliated company where he "was responsible for overseeing the quality assurance of Pipe Fittings, Flanges, and Nipples commercialized by" the the affiliated company. The beneficiary also followed up "on the procedures and tests to approve new product development, overseeing quality control of the machining process of Fluida Pipe Fittings, and coordinating the packing and repair of damaged or non-conforming parts." However, the record is devoid of evidence establishing that the beneficiary's purported specialized knowledge of "foundry manufacturing process and resolution of foundry-casting defects" was involved in the performance of these duties. Once again, going on record without 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Beyond the decision of the director, and for the same reasons set forth above, the petitioner has failed to establish that the beneficiary will be employed in the United States in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced and educated engineers employed by the petitioning organization or in the industry at large. Accordingly, the petitioner may not be approved for this additional reason.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioning organization. However, it is 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)). As stated by the Commissioner in *Matter of Penner*, 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." 18 I&N Dec. at 52. 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.

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, [redacted] 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. 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 the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, [redacted] stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses

responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, 18 I&N at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* than an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also 1756, Inc. v. Attorney General*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

As cited above, a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Executive Associate Commissioner also directs CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Executive Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Memorandum from [redacted] Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by engineers experienced in foundry manufacturing employed elsewhere. As the petitioner has failed to document any materially unique qualities to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced engineer or that he has received special training in the company's methodologies or processes which would separate him from other professionals employed with the petitioning organization or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

The legislative history of 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. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary will not be employed in the United States, and was not employed abroad, in a capacity involving specialized knowledge. For these reasons, the director's decision will be affirmed and the petition will be denied.

Beyond the recommended decision of the director, the petition will also be denied because the petitioner failed to establish that the beneficiary, who will be stationed primarily at the worksite of an unaffiliated employer, will be controlled and supervised principally by the petitioner. Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F).

As amended by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F), provides:

> An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 1101(a)(15)(L) if –
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> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
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> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act was created by the L-1 Visa Reform Act of 2004 and is applicable to all L-1B petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). In evaluating a petition subject to the terms of the L-1 Visa Reform Act, the petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

In this matter, the petitioner claims to employ seven people and that its principal place of business in the United States is in Auburn Hills, Michigan. However, as the petitioner claims that the beneficiary will physically perform his job duties at the workplace of the petitioner's client, Caterpillar, in Mossville, Illinois, the petitioner checked "yes" in response to the query in the L Classification Supplement to the Form I-129 which asks whether the beneficiary will be stationed "offsite." The petitioner describes its supervision and control of the beneficiary while working within the Caterpillar facility in the L Classification Supplement as follows:

> All of [the beneficiary's] work at the Caterpillar plant will be directed and controlled by [the petitioning organization]: Caterpillar will not direct, control or supervise any of [the beneficiary's] work.

The petitioner also describes the beneficiary's proposed employment within the Caterpillar facility in the June 18, 2007 letter as follows:

> All of [the beneficiary's] work at the Caterpillar plant will be directed and controlled by [the petitioning organization], since the sole purpose of his presence at their facility is to ensure that [the petitioning organization's] products meet all engineering standards and quality specifications for this customer. Caterpillar derives no benefit and receives no payment for his assignment on-site. Caterpillar will not direct, control or supervise any of [the beneficiary's] work.

As noted above, the beneficiary will perform duties at the Caterpillar facility which pertain to the inspection and design of the petitioning organization's products being produced in Mexico. The petitioner asserts that the beneficiary will report to the petitioner's "customer service and technical manager" on a daily basis regarding any defects in the petitioning organization's products. The petitioner also claims that the beneficiary will engage in "co-design" activities with Caterpillar's engineers, participate on "product design teams," analyze changes proposed by Caterpillar's engineers and purchasing workers, participate in "joint" Six Sigma programs to improve quality of products, and "follows up" the machining of the castings by Caterpillar.

Upon review, the record is not persuasive in establishing that the beneficiary, who will be stationed primarily at the worksite of an unaffiliated employer, will be controlled and supervised principally by the petitioner. Section 214(c)(2)(F) of the Act. While the petitioner claims that the beneficiary will be supervised and controlled by the petitioner's employees in Auburn Hills, Michigan, and in Mexico and that the beneficiary will report on a daily basis to the petitioner's "customer service and technical manager," the petitioner fails to specifically address the supervision and control of the beneficiary while participating in programs, activities, and teams administered by Caterpillar. Once again, going on record without 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)). It appears that the beneficiary would, for all practical purposes, be under the control of Caterpillar during his participation in "co-design" activities with Caterpillar's engineers, on Caterpillar "product design teams," and in "joint" Six Sigma programs. Given that the beneficiary will be employed at the workplace of the unaffiliated employer, it is imperative under the

L-1 Visa Reform Act that the petitioner clearly establish that the beneficiary will be principally, rather than nominally or indirectly, supervised and controlled by the petitioning organization while working at Caterpillar.

Accordingly, as it cannot be concluded that the beneficiary will be principally controlled and supervised by the petitioner during his employment at the unaffiliated employer's workplace, the petition will be denied for this additional reason.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.[1]

ORDER: The appeal is dismissed.

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[1]It is noted that the director also denied the petition because the petitioner failed to establish that the beneficiary has specialized knowledge of the petitioning organization's products or processes. The director determined that the beneficiary instead appears to have knowledge, even if specialized, relating to the petitioner's customer, Caterpillar, and not to the petitioning organization. Upon review, the AAO will withdraw this portion of the director's decision. While the petitioner failed to establish that the beneficiary has specialized knowledge, or that he will be, or has been, employed in a specialized knowledge capacity, the petitioner's description of the beneficiary's purported specialized knowledge (foundry manufacturing process and resolution of foundry-casting defects) appears to relate to the petitioning organization and not specifically to Caterpillar.