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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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File: WAC 08 027 51060 Office: CALIFORNIA SERVICE CENTER Date: AUG 26 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 AAO will dismiss the appeal.

The petitioner, a California corporation, filed this nonimmigrant visa petition to employ the beneficiary as an L-1B 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 claims to be a subsidiary of the beneficiary's foreign employer, located in the Philippines. It intends to engage in the manufacture of wrought iron materials. The petitioner seeks to employ the beneficiary as the executive manager of its new office in the United States for a period of three years. [1]

The director denied the petition based on two separate grounds. First, the director determined that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in a capacity requiring specialized knowledge. Second, the director determined that the petitioner did not provide evidence of the temporary nature of the beneficiary's services, as required by 8 C.F.R. § 214.2(l)(3)(vii).

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 "has mixed up the duties of a manager or executive with that of involving 'specialized skills,'" and "arbitrarily disregarded," the criteria for employment in a managerial or executive capacity. Counsel further contends that the record contains ample evidence to establish that the beneficiary's proposed U.S. employment is temporary.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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

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[1] Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(*3*), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

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.

As a threshold issue, the AAO emphasizes that the evidentiary criteria to be applied in this matter are dependent upon which L-1 classification the petitioner requested as of the date of filing. Upon review of the Form I-129, Petition for a Nonimmigrant Worker, filed on November 19, 2007, it is noted that at Part 2, item 1, Requested Nonimmigrant Classification, the petitioner or its representative handwrote "L1B." On the L Classification Supplement, at Section 1, item 1, where asked to indicate the classification sought, the petitioner marked "L-1B specialized knowledge." The petitioner also responded to item #13 on the L Classification Supplement, which pertains to L-1B employees.

Based on the petitioner's statements on Form I-129, the director properly determined that the petitioner filed an L-1B classification petition.

The regulation at 8 C.F.R. § 214.2(l)(3)(vi) states that if the beneficiary is coming to the Untied States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

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 first issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and that he would be employed in the United States in a capacity requiring specialized knowledge.

On the Form I-129, the petitioner described the beneficiary's current foreign duties and proposed U.S. duties as the following: "Managing, designing, manufacturing wrought iron company and performing structural and steel industrial projects."

In a letter dated November 5, 2007, counsel for the petitioner stated that, as executive manager of the new office in the United States, the beneficiary "will be in charge of cultivating business and procuring new accounts, staffing the company and strategizing its manufacturing operation, negotiating and entering into binding contracts; purchasing the required machinery, tools and other necessary equipment as well as executing checks and other negotiable documents." Counsel stated that the beneficiary "has been continuously employed by the parent company in an executive capacity since its foundation several years ago," and that "his skill in starting a business and stimulating and nurturing growth thereof is precisely the skill essential to the successful commencement of our company's operation." Counsel further noted the beneficiary's "intimate familiarity and connection with the operation of the parent company," and stated that "it is believed that only [the beneficiary] can successfully complete this task."

The director issued a request for additional evidence (RFE) on December 21, 2007, in which she instructed the petitioner to submit additional evidence to establish that the beneficiary possesses specialized knowledge. The director requested that the petitioner submit a more detailed description of the beneficiary's proposed duties and: (1) explain any special or advanced duties performed by the beneficiary that are different from other similarly employed workers; (2) explain in more detail exactly what it is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge and whether it is used or produced by other employers in the United States or abroad; (3) explain how the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in his field; and (4) explain the training the beneficiary will provide to other employees, if applicable.

Counsel for the petitioner submitted a letter dated January 10, 2008 in response to the RFE. In response to the director's request that the petitioner explain any special or advanced duties the beneficiary will perform, counsel reiterated portions of his initial letter dated November 5, 2007, and noted that the beneficiary's "managerial skill, industrious character, experience, and knowledge are essential to the stability of the new operation." Counsel further described the petitioner's product as follows:

> The underlying industry involves in the wrought iron products and various supplies for industrial and constructional projects, including, but ot llimited [*sic*] to, designing, producing, assembling and erecting foundations, scaffoldings, and other durable structures as well as other related construction products that are essential in residential and commercial buildings.

Counsel indicated that the beneficiary "will train U.S. workers to operate, manage and supervise a highly industrious operation, i.e. a wrought iron manufacturing [*sic*] which will design, produce, manufacture, assemble and erect foundations, scaffoldings, and other durable structures." Counsel concluded as follows:

> If Petitioner is unable to secure the Alien's services, it will remain all but unable to effectively start its operation. This is in particular due to the fact that the Alien is expected to bring his knowledge combined and enriched by his cultural heritage and artistic talents which have enormously enhanced his products and made them universally unique and distinguished. Consequently, if the Alien is not able to commence his services, the petitioner will have to fold and close its U.S. office. In such event, there will be no income and no business activities at all.

The director denied the petition on February 20, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in a capacity that requires specialized knowledge. In denying the petition, the director found that the petitioner had failed to articulate the nature of the beneficiary's specialized or advanced knowledge and had not described any duties that could be considered specialized.

On appeal, counsel for the petitioner states:

> First and foremost, the within petition seeks beneficiary's services as an executive, Chief Executive Officer, and not as an individual with special or technical know how or knowledge, which is the characteristic of the latter. As such, the "special knowledge" test is inapplicable herein. Moreover, assuming arguendo, special knowledge of the company's operational policies was required. Still, more than ample evidence and tons of documents were submitted which readily satisfy this requirement. To illustrate, such evidence substantiates the fact that beneficiary has been an "insider" in the parent company with superior knowledge of its products, services and marketing strategies. Such indispensable knowledge could well satisfy the aforesaid test in that it's an integrated part of the within position and disposes of any further or additional argument.

Counsel further states that "[a]lthough it can be argued that a company's president must have certain 'special knowledge' as how to run a company, it pertains to L-1A and does not fall within the purview of L1B which involves persons with specialized expertise as an indispensable requirement." Counsel contends that the director "has mixed up the duties of a manager or executive with that of involving 'specialized skills.'"

Counsel further suggests that the beneficiary possesses characteristics of an employee with specialized knowledge as outlined in a 1988 legacy Immigration and Naturalization Service (INS) memorandum from Richard Norton.[2] Counsel notes that such employees possess knowledge that is valuable to the employer's competitiveness in the marketplace; are uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions; have been utilized as a key employee abroad and have been given significant assignments which have enhanced the employer's productivity, competitiveness, image and financial position; and possess knowledge that can be gained only through extensive prior experience with that employer. Counsel asserts that the director failed to consider whether the beneficiary possesses such characteristics.

Counsel goes on to assert that the beneficiary's proposed position falls within the statutory definition for "managerial capacity, and that the petitioner submitted evidence sufficient for approval of a new office petition pursuant to 8 C.F.R. § 214.2(l)(3)(v). Counsel contends that the director failed to apply the criteria applying to managerial employees, and emphasizes that the specialized knowledge classification "does not pertain to executive positions in general and to Chief Executive Officers in particular."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge.

Preliminarily, however, the AAO notes that counsel's suggestion that the director was required to apply the statutory and regulatory criteria pertaining to managerial and executive employees to the facts of the instant case is unpersuasive. As discussed above, the petitioner filed a Form I-129 petition on which it unequivocally stated that it was seeking to classify the beneficiary as an L-1B specialized knowledge worker. The request to have the AAO reconsider the petition on appeal as a request for L-1A classification is not properly before the AAO. If the petitioner seeks to classify the beneficiary as an L-1A manager or executive, then it will need to file a new or amended petition and supporting documentation with the Service Center. *See* 8 C.F.R. § 214.2(l)(7)(i)(C).

Looking to the language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

> This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf.* Westen, *The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

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[2] *See* Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Special Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum"). *See* Memo. of Richard Norton, *Interpretation of Specialized Knowledge Under the L Classification*, (Oct. 27, 1988), *reproduced in* 65 Interpreter Releases 1170, 1194 (November 7, 1988).

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).[3]

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the principles of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23,* 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, the AAO must look to the language of section 214(c)(2)(B) itself, that is, the terms "special" and "advanced." Like the courts, the AAO customarily turns to dictionaries for help in determining whether a word in a statute has a plain or common meaning. *See, e.g., In re A.H. Robins Co.*, 109 F.3d 965, 967-68 (4th Cir. 1997) (using *Webster's Dictionary* for "therefore"). According to *Webster's New College Dictionary*, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." *Webster's New College Dictionary*, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, 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

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[3] Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

categories" of workers or "skilled craft workers." *See* 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 (Nov. 12, 1969).

Neither in 1970 nor in 1990 did Congress provide a controlling, unambiguous definition of "specialized knowledge," and a narrow interpretation is consistent with so much of the legislative intent as it is possible to determine. H. Rep. No. 91-851 at 6, 1970 U.S.C.C.A.N. at 2754. This interpretation is consistent with legislative history, which has been largely supportive of a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch,* Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). 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. In other words, specialized knowledge generally requires more than a short period of experience; otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and prove that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Counsel, while apparently conceding that the petitioner never intended to establish that the beneficiary possesses specialized knowledge and that the criteria for specialized knowledge are inapplicable to the petition, nevertheless claims that the petitioner submitted "ample evidence and tons of documents" to establish that the beneficiary also qualifies for L-1 classification as a specialized knowledge employee. Counsel's claim is based on the beneficiary's status as an "insider" in the parent company and his "superior knowledge of its products, services and marketing strategies." Counsel has previously mentioned the beneficiary's managerial skills and "intimate familiarity and connection with the operation of the parent company." These statements represent the only claims regarding the beneficiary's specialized knowledge.

Here, as noted by the director, the beneficiary's proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. The beneficiary's responsibilities for "cultivating business and procuring new accounts," staffing the company, entering contracts, purchasing equipment and tools, and executing checks are all duties typically performed by any employee responsible for overseeing a start-up operation in a new market. The record is devoid of any documentary evidence that the beneficiary's proposed position would involve the application of special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. Counsel has asserted that the beneficiary's "cultural heritage and artistic talents . . . have enormously enhanced his products and made them universally unique and distinguished." However, there is no other reference in the record to the "unique" nature of the petitioner's products or any particular artistic or cultural influences which would set them apart from similar products manufactured by other companies in the industry. 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). While the beneficiary's familiarity and experience with the foreign entity's operations is undoubtedly valuable to the petitioner, the evidence of record fails to establish that any prior experience with the foreign entity would actually be required to perform the general oversight activities proposed.

The AAO acknowledges that it is possible for an individual employed in a managerial role to meet the criteria for specialized knowledge capacity set forth at section 214(c)(2)(B). However, the petitioner has not established that the particular position offered to the beneficiary requires an individual with knowledge, experience or characteristics not typically possessed by managers in the petitioner's industry. The petitioner, like the foreign company, will produce wrought iron products and provide services for industrial and construction projects, such as erecting foundations and scaffolding. Again, there is no evidence that the beneficiary would rely on "special" or "advanced" knowledge of the petitioner's products or processes in order to perform his duties as executive manager responsible for establishing the new office. The petitioner has not established that the particular position offered to the beneficiary requires an individual with knowledge, experience or characteristics beyond possession of general knowledge related to the petitioner's industry and general business and management skills. The beneficiary's knowledge and expertise do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations. The fact that the petitioner's parent company considers the beneficiary the best qualified, or even the only qualified manager, capable of successfully establishing a U.S. subsidiary is insufficient to establish that the beneficiary possesses specialized knowledge or that the offered position requires specialized knowledge. Again, the petitioner has not demonstrated how the U.S. position requires more than management skills and general knowledge that is common in the U.S. construction industry.

The AAO does not disagree with counsel's assertion that the beneficiary will be employed primarily to carry out a key process or function, or that he has been utilized as a key employee abroad. If this were all the petitioner needed to establish, almost any senior employee would qualify as a specialized knowledge worker. However, the statute and regulations require the petitioner to demonstrate that the beneficiary possesses, and that the proposed employment requires, special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests, or an advanced level of knowledge or

expertise in the organization's processes and procedures. As noted above, the beneficiary's knowledge and expertise, while valuable to the petitioner, does not include the type of special or advanced knowledge of the petitioning organization required by the regulations. The petitioner has not submitted evidence to establish that the beneficiary possesses, or that the position requires, knowledge that can only be gained through extensive experience with the foreign employer, or that the beneficiary will be employed to contribute to the U.S. company's knowledge of foreign operating conditions.

Regardless, counsel's reliance on the Norton memorandum is misplaced. It is noted that the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or the regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as an intracompany transferee with specialized knowledge. Specifics are clearly an important indication of whether a beneficiary's duties encompass specialized knowledge; otherwise meeting the definition would simply be a matter of reiterating the regulations. *See, e.g., Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). While the beneficiary may possess knowledge that is valuable to the petitioner's productivity, competitiveness, and financial position and has held key assignments abroad, these factors, by themselves, do not constitute the possession of specialized knowledge. While the beneficiary's contribution to the economic success of the company may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's processes 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.

Based on the foregoing discussion, the petitioner has not established that the beneficiary possesses special knowledge of the petitioner's products or services, or an advanced level of knowledge of the company's processes and procedures, nor has it established that the position of executive manager within its organization requires specialized knowledge.

The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held by management-level employees in his field. There is nothing in the record to suggest that any other experienced employee within the parent company's organization, or any employee with a record of success in a similar role within the petitioner's industry, could not adequately perform the proposed duties.

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. v. Attorney General*, 745 F. Supp. at 16. Based on the foregoing, the record does not establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that the beneficiary's proposed employment in the United States is temporary.

The regulation at 8 C.F.R. 214.2(l)(3)(vii) states:

> If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

While a petitioner seeking L-1 classification generally need submit only a simple statement of the facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily, where the beneficiary is the owner/major stockholder of the petitioning company, a greater degree of proof is required. *See Matter of Isovic*, 18 I&N Dec. 361 (Comm. 1980).

The petitioner indicates that the U.S. company is a wholly-owned subsidiary of the foreign entity, which, based on the evidence of record, is a sole proprietorship owned and operated by the beneficiary. Therefore, the beneficiary is the sole owner of both the U.S. and foreign entities.

The petitioner indicated on Form I-129 that it was seeking to employ the beneficiary for two years. In his letter dated November 5, 2007, counsel for the petitioner stated:

> If [the beneficiary's] contemplated status is granted, he will travel to the U.S. with his wife and minor child on a temporarily [*sic*] basis for duration of his approved stay. Upon completion of his assignment, he will install other qualified U.S. employees and executives and return to the Philippines.

Counsel further stated that "once the operation of the U.S. entity is fully established and has proven to be successful in the U.S. market, it is planned to have [the beneficiary] resume his position in the Philippines."

The director denied the petition, concluding that the petitioner did not provide evidence that the beneficiary's services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. In denying the petition, the director determined that the petitioner failed to submit evidence, such as a business plan or other documentation, indicating the duration of the beneficiary's intended stay.

On appeal, counsel emphasizes that the petitioner indicated on Form I-129 that it intends to employ the beneficiary for two years, and that such statement is sufficient. Counsel asserts that "the extent that 'temporariness' will continue to be a factor has been lessened as a result of the recognition of the doctrine of 'dual intent' for L petitions under the Immigration Act of 1990."

Upon review, the petitioner has not satisfied the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(vii).

Counsel has essentially asserted on appeal that the regulations do not require evidence that the beneficiary's services will be for a temporary period or evidence that the beneficiary will be transferred abroad upon completion of his assignment. Counsel's suggestion that no such requirement exists, when the requirement is stated in the plain language of the regulations, is not persuasive. The petitioner's evidence in this regard

consists of the employment dates indicated on Form I-129, and the unsupported statements of counsel. 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).

Furthermore, the director requested that the petitioner provide an organizational chart depicting the staffing of the foreign company and instructed the petitioner to "explain how the parent company will continue to function with the absence of [the beneficiary] for an extended period." The petitioner did not respond to these specific requests, or otherwise indicate who would manage the foreign company during the beneficiary's U.S. assignment. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(vi)(A).

In support of its assertion that it has secured sufficient physical premises to house the United States operation, the petitioner submitted a copy of a "Virtual Office Agreement" dated September 19, 2007, in which the petitioner is designated as "licensee." The agreement grants the petitioner mail services and a directory listing for a base monthly fee of $75, and the non-exclusive right to use a conference room, based on its availability, for an hourly fee. The petitioner has not submitted evidence that it has secured any physical premises for its exclusive use, or premises which would be suitable for operation of an iron works and construction services business. Therefore, the petitioner has not secured sufficient physical premises, and the petition may not be approved 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 appeal will be dismissed.

ORDER: The appeal is dismissed.