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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 0 8 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee 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 California corporation, provides home health care services. The petitioner claims to be an affiliate of [redacted] located in the Philippines. The petitioner seeks to employ the beneficiary as a Budget Analyst for a period of four years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and will be employed in a position that requires 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 for the petitioner contends that it has submitted sufficient evidence to establish that the beneficiary possesses the specialized knowledge necessary for the Budget Analyst position. It submits a brief and additional supporting documents for consideration.

I. The Law

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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

> 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.

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 regulation at 8 C.F.R. § 214.2(l)(3) 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" as follows:

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

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

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

The relevant qualifying relationships described in paragraph (l)(1)(ii) are the parent-subsidiary relationship and the affiliate relationship. Pursuant to the regulations at 8 C.F.R. § 214.2(l)(1)(ii):

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

* * *

(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 . . .

II. The Issues on Appeal

The director denied the instant petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and will be employed in a position that requires specialized knowledge.

The petitioner is a home health care services company established in 2002. It provides skilled nursing therapy and related services in Los Angeles County. The petitioner has over 50 field nurses, therapists and assistants. These individuals are supported by 20 personnel who perform management, coordination, and quality control functions. The petitioner and its affiliated agencies grossed over $4.5 million in income in 2008.

The beneficiary has worked as an Accounting Officer for the petitioner's Philippine affiliate, since 2005. The petitioner now seeks to hire her as a Budget Analyst. Prior to her position with the affiliate, the beneficiary worked with the as a Budget Officer from 1999 to 2005. She has a bachelor's degree in criminology.

With its Form I-129, Petitioner for a Nonimmigrant Worker, the petitioner submitted a written brief and other documents. It provided letters from both the petitioner and the foreign affiliate to certify the beneficiary's past employment and offer of future employment. The petitioner's brief contains a list of the job duties for the beneficiary's foreign position as an Accounting Officer, as well as the job duties for her proposed position of Budget Analyst with the petitioner. The petitioner submitted the claimed foreign affiliate's corporate profile, company brochures, business certification, certificate of incorporation and organizational chart. The petitioner also submitted its own certificate of incorporation, organizational chart, business license, home health care award, corporate profile, corporate tax returns, and quarterly wage withholding records. Lastly, the petitioner submitted the beneficiary's resume, diploma, educational transcripts and passport.

The director issued a lengthy Request for Evidence (RFE) and requested that the petitioner provide, *inter alia*, more information about the beneficiary's duties abroad and more explanation regarding the petitioner's product, system, or process of which the petitioner claims the beneficiary has specialized knowledge. The petitioner responded with a written brief from its counsel and additional documents. The petitioner submitted a letter from its administrator containing the percentages of time the beneficiary will spend performing each duty. Another letter from the administrator states that the beneficiary is qualified for her proposed position. The petitioner also submitted a chart containing the petitioner's current foreign national employees. Other documents submitted in response to the RFE were previously submitted with the Form I-129.

The director denied the petition, finding the petitioner failed to show that the beneficiary has specialized knowledge and will be employed in a position requiring specialized knowledge. The director found that the petitioner had not provided evidence to demonstrate that her knowledge or expertise extends beyond that of a skilled individual in her field. The denial states:

> Contrary to counsel's argument, mere familiarity with an organization's accounting systems and polices, does not constitute special knowledge under section 214(c)(2)(B) of the Act. Simply relying on the beneficiaries' [*sic*] familiarity with the parent organization, her innate talent, and her potential to contribute to the petitioner's growth is not sufficient to establish that she possesses specialized knowledge or has been and will be employed in a capacity involving specialized knowledge.

On appeal, the petitioner submits a written brief in which it contends that the beneficiary possesses specialized knowledge from her extensive experience in finance and accounting. It also claims that it has proven that the beneficiary's position with the parent company involved specialized knowledge, and that the

proposed Budget Analyst position requires the knowledge gained from the overseas employment. The petitioner also submits the U.S. Bureau of Labor Statistic's Occupational Outlook Handbook entry for the position of Budget Analyst, as well as copies of previously submitted documents.

III. Analysis

A. Specialized knowledge

The director denied the petition because the petitioner failed to establish that the beneficiary has specialized knowledge and will be employed in a position that requires specialized knowledge, as required by 8 C.F.R. § 214.2(l)(3)(ii).

The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner claims to meet the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures. A letter from the petitioner submitted with its Form I-129 states:

> [The beneficiary's] previous experience with our parent company, in the Philippines has made her a valuable addition to our team. She has been with since 2005 and has gained the knowledge of the protocol, procedures, and financial know-how through our parent company. And since we would like our company to function just like our parent company, having [the beneficiary] transferred from their company would be best.

Although the petitioner claims the beneficiary has knowledge of "the protocol, procedures, and financial know-how through our parent company," it provides no further explanation as to what these protocol and procedures are and how they differ from other widely used accounting methods.

On appeal, the petitioner continues to claim the beneficiary has specialized knowledge due to her current job overseas: "The Beneficiary's job duties are extensive and require specialized knowledge in accounting, finance, and processes and procedures in order to be able to facilitate a workable budget for the new acquisition of the parent company." Although the petitioner again refers to the specialized knowledge of the beneficiary, it again fails provide any details regarding what makes the beneficiary's knowledge different from that of anyone else working in the field. Specifics are clearly an important indication of whether a beneficiary's duties are require specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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 also states:

> An [*sic*] job position [*sic*] that typically requires a Bachelor's degree means that such position requires possession of specialized knowledge of petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner cites to 8 C.F.R. § 214.2(l)(1)(ii)(D) as the authority for this proposition. However, the regulation cited does not mention degrees of any sort, but refers instead to the definition of specialized knowledge. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) ("*Specialized knowledge* means special 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 this case, the petitioner states without support that a

position requiring a Bachelor's degree is one that requires specialized knowledge. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The petitioner contends that the beneficiary has specialized knowledge in that she knows the procedures, functions, and protocols of budgeting. The petitioner does not allege, however, that the procedures, functions, and protocols of budgeting at either the petitioner or its foreign affiliate are different from those used by other companies.

The petitioner similarly fails to show that the beneficiary's proposed position of Budget Analyst requires an individual with specialized knowledge. According to the petitioner, a Budget Analyst has the following duties:

- Developing company budgets;
- Analyzes current and past budgets, prepares and justifies budget requests;
- Allocates funds according to spending priorities in for company;
- Analyzes accounting records to determine financial resources required to implement program and submits recommendations for budget allocations;
- Recommends approval or disapproval of requests for funds;
- Advises staff on cost analysis and fiscal allocations;
- Advises management on financial decisions and corporate spending;
- Works directly under the Chief Financial Officer;
- Maintaining budgeting data bases;
- Compiling data for financial reports; and,
- Making revenue forecasts.

This description of job duties includes tasks typically associated with accountants or budget analysts. The petitioner provides no explanation as to how the petitioner's processes are special or unique when compared to the procedures and protocols of other businesses. Again, 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 duties refer to general budget and accounting analysis, financial recommendations, and data compilation. The petitioner fails to explain why these duties could not be adequately performed by someone with standard training in accounting. In addition, the petitioner failed to allege and demonstrate that the processes and procedures used by the petitioner are also those used by the foreign affiliate, such that the beneficiary's experience has made her a specialized knowledge employee.

The petitioner submitted its organizational chart which shows 20 administrative employees. The chart does not show the petitioner's proposed position of Budget Analyst. The chart includes one Chief Finance Officer and one Accountant. The petitioner did not indicate how the petitioner's position will differ from that of the Accountant or explain why the beneficiary's proposed duties require her specialized knowledge and cannot be performed by other employees.

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 states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. 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. Here, the petitioner has indicated that the beneficiary's experience as an Accounting Officer with its affiliate has made her a specialized knowledge employee. The petitioner did not indicate anything unique about the accounting procedures or processes of the petitioner or its affiliate. It therefore effectively states that anyone with experience in accounting possesses "special knowledge" or an "advanced level of knowledge." The AAO must conclude that, while it may be correct to say that the beneficiary is a skilled employee, these skills do not constitute specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and section 214(c)(2)(B) of the Act.

Counsel's expansive interpretation of the specialized knowledge provision is also objectionable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker. In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm'r 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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*, *supra* at 50 (citing H.R. SubComm'r No. 1 of the Jud. Comm'r, *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 that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker.

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'r 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, 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*, *id.* at 50 (*citing* H.R. SubComm'r No. 1 of the Jud. Comm'r, 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* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that 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 cannot be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm'r 1981). 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.*, 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.")

The petitioner's assertions that the beneficiary's experience as an Accounting Officer and her bachelor's degree endow her with specialized knowledge fails to make the above-noted distinction between skilled workers and those with specialized knowledge. While the beneficiary may be a qualified professional, this does not meet the standard necessary to demonstrate specialized knowledge.

For these reasons, the petitioner has failed to prove that the beneficiary has specialized knowledge and will be employed in a specialized knowledge capacity. The appeal of the petitioner on this issue is dismissed.

B. Beyond the decision of the director

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its 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).

i. Specialized knowledge abroad

Beyond the decision of the director, the petitioner has failed to demonstrate that the beneficiary was employed for a year in a specialized knowledge capacity by a qualifying organization, as required by 8 C.F.R. § 214.2(l)(3)(iv).

Accompanying the Form I-129, the petitioner submitted a certification from the foreign parent confirming that the beneficiary has been employed there as an Accounting Officer from October 25, 2005 to the present. The petitioner also submitted the foreign parent's job description for the position of Accounting Officer. In its response to the RFE, the petitioner added the percentage of time the beneficiary spent on each task:

- Supervises and coordinates activities involved in accounting process and financial transactions and records associated with billing, revenue, collections, and record keeping activities [10%];
- Supervises and trains accounting staff in accordance with the accounting policies and procedure of the corporation [5%];
- Plans, organizes, directs and evaluates accounting system of the corporation [10%];
- Oversees the preparation of financial statements, management reports and documents [20%];
- Reviews accounting reports and documents [5%];
- Maintains and safeguards accurate and up-to-date system of accounting records [100%];

- Monitors accounting and financial activities in compliance with the procedures and guidelines of the corporation [100%];
- Plans and schedules work of accounting staff for proper distribution of assignments; evaluates work performance of the accounting staff [10%]; and
- Other duties may be assigned from time to time [when necessary].

The above percentages provided by the petitioner indicate that the beneficiary will spend 260% of her time on the above tasks. As this is a nonsensical assertion, it is not credible and the percentages cannot be afforded any weight. If USCIS fails to believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position. Although the petitioner asserts that the beneficiary's experience endows her with specialized knowledge, the petitioner has not articulated any basis to this claim. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of a budget analyst with another employer within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). 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 rationale for this finding regarding specialized knowledge in the beneficiary's current position is nearly identical to above-described rationale for the finding regarding the beneficiary's proposed position. The job descriptions for both positions are exceedingly similar. The petitioner stated that it wishes to employ the beneficiary because it wants to run like the foreign company. As stated previously, the beneficiary's skills or qualifications in the field of accounting and finance do not make her a specialized knowledge employee. The petitioner failed to explain how the foreign company's procedures and processes are at all special, such that they could not be readily learned by any individual in the field. A skilled worker is not necessarily a specialized knowledge worker.

For the above-stated reasons, the petitioner has also failed to meet its burden of demonstrating that the beneficiary was employed in a specialized knowledge capacity for one year by the petitioner's foreign affiliate. On this alternative ground, the petition is denied.

ii. Qualifying relationship

The petitioner must provide evidence that both it and the entity that previously employed the beneficiary are qualifying organizations. 8 C.F.R. § 214.2(l)(3)(i). On its Form I-129, the petitioner indicates that it is the subsidiary of [redacted].[1] It states that the the majority shareholder of [redacted] corporation also owns 50% of the petitioner.

The petitioner provided information regarding ownership of the foreign company with its original submission. The petitioner's brief submitted with the Form I-129 contains the following chart:

Name of Subscribers	# of Shares Subscribed	Amount Subscribed
[redacted]	720	P 72,000
	580	P 58,000
	570	P 57,000
	430	P 43,000
	220	P 22,000
	220	P 22,000
	140	P 14,000

In the brief, counsel for the petitioner indicates that this information is contained in the Stock Corporation General Information Sheet, attached as Exhibit 9. However, the petitioner did not submit an Exhibit 9. 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).

The above chart shows that a total of 2880 [redacted] shares have been issued. Mr. [redacted] owns 720, or 25% of these shares. Although he has more shares than any other individual, Mr. [redacted] clearly does not have an outright majority. Thus, the petitioner's chart contradicts its assertion that Mr. [redacted] is the majority shareholder of [redacted]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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[1] Although the petitioner claimed a subsidiary relationship, it actually describes an affiliate relationship. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(K) & (L).

To show its own ownership, the petitioner submitted income tax returns for 2008, including Schedule K-1s for Shareholder's Share of Income, Deductions, Credits, etc. The Schedule Ks show the following ownership:

[redacted] 23%
26%
23%
23%
5%

Mr. [redacted] name does not appear. Instead, his name appears on a stock certificate dated May 15, 2009 that issues 50% of the petitioners shares to [redacted]. Despite this recent transfer of ownership, the petitioner did not provide any documentation regarding the purchase of shares by [redacted] or [redacted] In addition, the certificate is labeled No. 3, however the petitioner provided no other certificates.

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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

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

However, even if the petitioner had successfully proven the claimed ownership of both entities, the ownership it claims would not create a qualifying relationship. As explained above, the chart provided by the petitioner shows that [redacted] owns 25% of the foreign entity. It provided no proxy or other voting agreements to show that Mr. [redacted] has other than 25% of the company's votes. This degree of ownership is not

sufficient to demonstrate the control needed for the claimed qualifying relationship. *See Matter of Siemens Medical Systems, Inc.*, *supra* (finding 50% ownership sufficient for *per se* control).

The petitioner has failed to show that Mr. [redacted] owns both the majority of the foreign entity and 50% of the petitioner. As a result, it has failed to provide sufficient evidence that the petitioner has a qualifying relationship with the claimed subsidiary/affiliate, as required by the regulations.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone, but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity. Beyond the decision of the director, the petitioner has also failed to show that the beneficiary worked abroad for one year in a specialized knowledge capacity, and that it has the necessary qualifying relationship. Accordingly, the appeal will be dismissed.

IV. Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.