



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



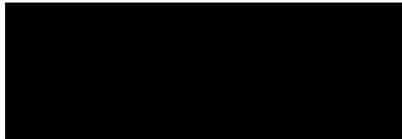
D7

FILE: EAC 04 118 51165 Office: VERMONT SERVICE CENTER Date: **AUG 10 2005**

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 is engaged in the business of information technology and technology consulting. It seeks to temporarily employ the beneficiary as a technical consultant in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had neither established that the beneficiary possesses the requisite specialized knowledge nor that the intended employment required specialized knowledge.

The petitioner subsequently filed a motion to reopen. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel submits a brief and asserts that the denial: (1) was arbitrary, capricious, and constituted an abuse of discretion by the director; (2) demonstrated that the director did not consider the extensive evidence presented by the petitioner in support of the beneficiary's specialized knowledge; and (3) misconstrued the requirements for specialized knowledge as outlined in a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines “specialized knowledge” as:

[S]pecial knowledge possessed by an individual of the petitioning organization’s product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization’s processes and procedures.

In a letter submitted with the petition dated March 9, 2004, the petitioner stated that the beneficiary has been employed for four and one-half years by the foreign company. The petitioner further explained that the beneficiary, who received a Master of Computer Applications degree from Bharathidasan University in India, began working for the foreign company in June 1999 as a technical consultant and has held such a position since that time. The petitioner alleges that based on his education and experience working in the foreign company, the beneficiary has an advanced level of knowledge in three of its proprietary software systems, namely, FLEXCUBE, PROMOTOR, and PrimeSourcing. Additionally, the petitioner indicates that the beneficiary will be engaged in the continued implementation and development of the FLEXCUBE system for the petitioner’s client [REDACTED]. With regard to the beneficiary’s job duties, the petitioner stated:

[The beneficiary] has been engaged in the development of [the FLEXCUBE] system in India, and [sic] where he has utilized his knowledge of [the foreign entity’s] proprietary banking systems software, in the implementation of this system. The FLEXCUBE is designed to deploy financial applications over the World Wide Web and other customer contact points such as ATM, PDA, WAP and telephone. In addition, FLEXCUBE provides financial institutions with a ready suite of web applications in the areas of retail banking, commercial banking, mutual funds, securities trading and bill payment. He will implement FLEXCUBE in conjunction with [REDACTED]; corporate audit and compliance testing standards, software platforms and security management systems.

The petitioner further stated:

Throughout his four and half years of employment with [the foreign entity], [the beneficiary] has developed advanced and proprietary knowledge of [the foreign entity’s] products, software, management information systems, and specifications, as well as their application to our client’s systems, which will assist the company’s competitive position. He possesses knowledge of [the foreign entity’s] methods of operations, including activities with respect to client service, as well as an advanced and in-depth understanding of all aspects of the internal commodities markets and structures. Through his experience with [the foreign entity], [the beneficiary] has developed expertise in the

business models and software and systems requirements of [the foreign entity's] clients. He possesses knowledge and skills that are highly developed and complex, and that are not readily available in the United States market. The fact that he has been engaged in the implementation of FLEXCUBE at [the foreign entity] makes his knowledge of our company and our client's requirements truly specialized.

A letter from the foreign entity, dated February 24, 2004, further reiterated these claims.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on March 23, 2004, which specifically requested evidence that the beneficiary possesses specialized knowledge of the petitioner'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, and that such knowledge was not general knowledge held commonly through the industry. The director advised that an acceptable response would include evidence that the beneficiary: (1) possesses knowledge that is valuable to the employer's competitiveness in the marketplace; (2) is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry; (3) has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; (4) possesses knowledge, which normally can be gained only through prior experience with that employer; and (5) possesses knowledge of a product or process that cannot easily be transferred to another individual. Furthermore, the director noted that the beneficiary's knowledge of the functions and systems of various clients did not appear to be uncommon knowledge for a technical consultant, and evidence was thus requested to support the contention that the beneficiary's knowledge was in fact specialized. The director requested information regarding classroom training and/or on the job training received and the amount of time necessary to receive such training. Finally, the director asked the petitioner to submit a copy of the beneficiary's resume, information regarding the beneficiary's work history on the [REDACTED] project abroad, and specific documentary evidence, such as a contract or personnel records, confirming the beneficiary's participation in the [REDACTED] project.

Counsel for the petitioner submitted a detailed response containing numerous arguments. Instead of supplying the information requested by the director, however, counsel contended that the director's requests for additional evidence were misplaced and erroneous and that the petitioner had previously submitted ample evidence with the initial petition that established the beneficiary's specialized knowledge. Counsel relies on a 1994 memorandum to support his refusal to provide the requested evidence and refutes each of the director's requests by relying on individual passages from this memorandum. Specifically, counsel asserted that the examples contained therein strongly support a conclusion in favor of determining that the beneficiary possesses specialized knowledge. Counsel cited several examples and attempted to equate them to the current situation of the beneficiary. See Memo. from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*). Counsel concluded that the petitioner had met its evidentiary burden and a favorable decision should be rendered.

The director determined that the record neither established that the beneficiary possesses specialized knowledge nor that the intended position in the U.S. is one that requires specialized knowledge. The director specifically noted that the petitioner had refused to submit a copy of the beneficiary's resume and

further noted that counsel's response to the request for evidence did little to supplement the record. The director stated that, although the beneficiary appears to have a working knowledge of the petitioner's systems based on a three-month in-house training program rendered to all incoming technical consultants, the evidence submitted did not establish that the beneficiary's knowledge was uncommon or distinct. The director concluded that despite the director's request, the petitioner had failed to submit evidence establishing that a similarly qualified technical consultant could not also perform the duties of the position being petitioned for within a short period of time and consequently denied the petition.

On appeal, counsel submits a detailed brief in support of the petitioner's assertions that the beneficiary possesses specialized knowledge. Counsel again relies on the language of the 1994 memorandum and attempts to individually refute many of the key points of the director's decision. Counsel goes as far as to call the director's request for a copy of the beneficiary's resume a "red herring" and concludes, without supporting documentation or persuasive argument, that the director's decision "does not comply with statutory, regulatory, nor internal agency memorandum of the definition of specialized knowledge." Counsel makes no attempt to overcome the reasons for director's stated grounds for denial.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge nor that the intended position requires an employee with specialized knowledge.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided an abbreviated description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a technical consultant. Despite specific requests by the director, namely, whether the beneficiary had worked abroad on the [REDACTED] project, the petitioner failed and/or refused to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner, through counsel, repeatedly states throughout the record and again on appeal that the beneficiary performs a multitude of complex and highly technical job duties for the petitioner, the nature of which are not fully understood by CIS. Counsel for the petitioner continually asserts that the beneficiary possesses specialized knowledge as a result of his almost five years of experience as a technical consultant and that such knowledge is far beyond that commonly found throughout the industry. Counsel further alleges that the time the beneficiary devoted solely to the FLEXCUBE project during this period has further developed his specialized knowledge. The record prior to adjudication, however, is devoid of evidence that would corroborate the contentions of counsel. Without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director's request for evidence was extremely specific. In fact, the director's request directly quoted characteristics identified by the 1994 Puleo memorandum as indicative of an alien's specialized knowledge, which requested clarification that the beneficiary's claimed specialized knowledge was not merely general knowledge held commonly through the industry. The director, therefore, was clearly acting in accordance with the Puleo memorandum and afforded the petitioner all available measures to supplement the record with additional evidence. However, counsel maintained his position and belief that

the director's request ran contrary to the 1994 memorandum. In addition to directly quoting five points highlighted in the Puleo memorandum, the director's request advised the petitioner that examples of acceptable evidence included copies of certificates, personnel records, and/or letters from authorized representatives of the petitioner attesting to classroom and/or on the job training. Although specifically requested by the director, the record contains no evidence whatsoever of the beneficiary's training, experience, daily duties, or level of expertise. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, counsel for the petitioner refused to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the petitioner. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, counsel insists that the AAO accept his uncorroborated assertions that the beneficiary possesses specialized knowledge. As previously stated, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. 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's only contention that the beneficiary's knowledge is more advanced than other technical consultants is its assertion on appeal that the beneficiary's duties, as set forth in the petitioner's letter submitted with the initial petition, are directly akin to those set forth in the Puleo memorandum. Again, the petitioner has not provided any information pertaining to the duties and training of the beneficiary or of the other technical consultants employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of the FLEXCUBE and other software systems as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. 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. at 165. The claim that the beneficiary has been employed by the petitioner for almost five years and that most of this period was devoted primarily to work on the FLEXCUBE system does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for a four to five year period.

Instead of providing relevant documentation in response to the director's request for evidence, the petitioner, through counsel, adamantly refused to address the director's requests or acknowledge any deficiencies in the record and continually relies on the Puleo memorandum as a means for justifying this position. In reference to the Puleo memorandum, counsel claims that the beneficiary's knowledge is valuable to the petitioner's competitiveness and is critical to preventing significant interruption of business and potential monetary penalties. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. 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 subcommittee 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." *Id.* 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* 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 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.*, 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.").

Counsel's main argument seems to focus on the desire of CIS to limit burdensome and irrelevant requests for evidence in specialized knowledge cases. CIS, however, is not prohibited, for example, to issue a request for evidence that will establish a beneficiary's advanced knowledge of a petitioner's product or practices, but strives to phrase such requests narrowly and in a direct manner. In this case, the allegations that all of the director's requests were inappropriate and against policy is misplaced and does not absolve the petitioner from its obligation to clearly establish its qualifications for the visa classification sought. The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish supporting evidence in support of its contentions. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden, and therefore the petitioner's reliance on the allegedly broad scope of the director's language in the request for evidence and decision as a basis to overturn the denial is misplaced and unpersuasive. As previously stated, 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).

Counsel further refers to two unpublished decision in which the AAO determined that the beneficiary met the requirements of specialized knowledge while working in the position of technical consultant for the petitioner. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. In this matter, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. In fact, the AAO notes from review of these decisions that the petitioner furnished sufficient evidence in response to the director's request for additional documentation

establishing that the beneficiaries in these cases possessed specialized knowledge. As previously discussed, counsel in the instant case refused to submit additional evidence in support of the petitioner's claim, and therefore the record remained devoid of sufficient evidence to establish the beneficiary's qualifications, unlike the record in the two cited decisions.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between the U.S. petitioner and a foreign entity. Although counsel and the petitioner claim repeatedly that the U.S. petitioner is a wholly owned subsidiary of the foreign entity in this matter, insufficient evidence has been submitted to establish this relationship. Although the petitioner's annual report appears to suggest that a qualifying relationship existed between the parties, the petitioner failed to submit evidence which definitively established the ownership structure of the U.S. entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petitioner must establish ownership and control in order to show a qualifying relationship exists. Stock certificates, 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.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Furthermore, the record also contains insufficient evidence to establish that the overseas company employed the beneficiary in a specialized knowledge capacity. Despite the director's specific request for evidence pertaining to the beneficiary's employment abroad and the training, skills, and duties entailed in such a position, the petitioner's counsel failed to address this request. Again, 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). Counsel's refusal to address such queries raises serious doubts regarding the claim that the foreign company employed the beneficiary in a qualifying capacity. *See 8 C.F.R. § 214.2(l)(3)(iv)*. Furthermore, although the petitioner claims that the beneficiary was employed abroad for nearly five years, the petitioner failed to submit appropriate documentation to corroborate such a claim. The beneficiary's pay stubs for the period from August 2003 to January 2004 were submitted. However, this documentation does not establish that the petitioner employed the beneficiary for the requisite year. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

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).

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.

ORDER: The appeal is dismissed.