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File: WAC 98 251 52426 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, California Service Center, denied the petition for a nonimmigrant worker. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims it is a development and maintenance software company. It seeks to temporarily employ the beneficiary as a software engineer, a position the petitioner claims requires specialized knowledge. Accordingly, the petitioner endeavors to classify the beneficiary as a 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 avers that the beneficiary previously worked for Metamor Global Solutions Ltd. located in Punjagutta, Hyderabad, India.

The director denied the petition on November 10, 1998, observing that the petitioner had only described the beneficiary's previous and proposed positions but had not presented any evidence to establish how the beneficiary's knowledge differed from others in the field or that the beneficiary was or would be a "key employee" of the petitioning company. The director determined that the petitioner had provided no evidence that would support the conclusion that the beneficiary's knowledge is different or uncommon from that generally found in the particular industry.

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.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education,

training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The petitioner submitted only the Form I-129 petition containing a brief description of the beneficiary's past and proposed duties. The record contains no other documentation in support of the petitioner's Form I-129 petition on behalf of the beneficiary.

The director denied the petition without requesting further evidence.

On appeal, counsel for the petitioner asserts that the beneficiary: (1) has special knowledge of the company product and its application in international markets, working on Y2K off-shore projects for U.S. clients; and, (2) has an advanced level of knowledge of processes and procedures of the company. Counsel also contends that the beneficiary's acquired software product and procedures knowledge is so essential to the successful completion of company projects and requirements that he qualifies as a key person for the position of software engineer specialist.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* In the present matter, the brief description in Section 1 of the Supplement to the Form I-129 and counsel's assertions on appeal are not sufficient to establish the beneficiary's eligibility for this visa classification.

As the director determined, the petitioner's description of the beneficiary's job duties fails to establish that an individual who possesses specialized knowledge is necessary for the position of specialist software engineer. Additionally, the qualifications necessary for the beneficiary to successfully perform his job as a specialist software engineer are nothing more than standard in the industry.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel's brief reiteration of the beneficiary's past and proposed duties and assertions on appeal are not supported by documentary evidence. 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 Obaighbena*, 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). Additionally, counsel does not specifically identify an erroneous conclusion of law or statement of fact as the basis of the appeal. As such, the regulations mandate the summary dismissal of the appeal.

The AAO also observes that the record contains no evidence of a qualifying relationship between the petitioner and the foreign entity. 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). For this additional reason, the petition could not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.