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**U.S. Citizenship  
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Services**

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File: SRC-02-123-55619 Office: TEXAS SERVICE CENTER Date: **FEB 18 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)

IN 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 filed this nonimmigrant petition seeking to extend the employment of the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida that manufactures railroad equipment. The petitioner claims that it is the subsidiary of [REDACTED] located in Gijon, Spain. The petitioner now seeks to extend the employment of the beneficiary for a three-year period as its Vice President of Technology and Marketing.

The director denied the petition concluding that the petitioner did not establish that: (1) the petitioner and the beneficiary's foreign employer possess a qualifying relationship; and (2) the beneficiary is performing in a specialized knowledge capacity. The director further stated that the beneficiary is ineligible for an extension of his status as a matter of law, due to the fact that he was not present in the United States on the date that the petition was filed.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the evidence of record shows that the petitioner and the beneficiary's foreign employer possess a qualifying relationship, and each entity is doing business. Counsel alleges that the beneficiary is employed in a specialized knowledge capacity. Counsel further asserts that the director misread and misinterpreted several documents, which caused a material negative impact on the petitioner's case. Finally, counsel points out that the beneficiary was present in the United States on the date of filing the petition, contrary to the director's finding. In support of the appeal, counsel submits a brief, additional evidence, and previously submitted documents.

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, 8 U.S.C. § 1101(a)(15)(L). 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 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) 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 regulation at 8 C.F.R. § 214.2(l)(ii)(G)(2) reflects that, in order for an entity to be considered a qualifying organization, the petitioner must show that it:

Is or will be doing business (engaging in international trade is not required) as an employer in the United States and 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 regulation at 8 C.F.R. § 214.2(l)(ii)(H) defines the term "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The first issue in the present matter is whether the petitioner and the beneficiary's foreign employer possess as qualifying relationship as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G).

In the initial petition, the petitioner stated that it is the subsidiary of the beneficiary's foreign employer. In an attached letter dated March 5, 2002, the petitioner stated that this relationship was created when the foreign entity acquired the petitioner in 1997. This letter further describes the petitioner's and the foreign entity's business operations as follows:

[The petitioner] has been manufacturing equipment for the nation's railroads since 1906. Our principle line of products in the past has been signal railbonds and power feed leads for both railroads and rapid transit systems. . . . [The foreign entity] is a manufacturer of railroad products in Europe, specializing in Aluminothermic Welding.

It is the intent of [the petitioner] to continue to introduce and sell new products in the United States that are manufactured by [the foreign entity] . . . .

On May 30, 2002, the director requested additional evidence. In part, the director requested evidence of the ownership and control of the petitioner and the foreign entity, such as "stock certificates, copies of corporate bylaws and constitutions which clearly indicate stock ownership, or copies of published annual reports which

indicate affiliates and subsidiaries and the percent of ownership held by the parent corporation." Regarding the petitioner's business operations, the director requested: (1) income tax returns for 1999, 2000, and 2001; (2) state and federal quarterly tax returns for 2001 and 2002; and (3) evidence that the petitioner is currently engaged in business operations, such as current financial records, tax returns, annual reports, profit and loss statements and other accountant reports, banking records, employee rosters, evidence of business conducted, invoices, bills of sale, product brochures of goods sold at or produced by the company, check registers, a statement of cash flows, insurance policies, and customs records. Regarding the foreign entity's business operations, the director requested: (1) evidence of business conducted such as invoices, bills of sale, product brochures of goods sold at or produced by the company, check registers, a statement of cash flows, insurance policies, and customs records; and (2) a current lease.

In a response dated June 28, 2002, the petitioner submitted: (1) a stock purchase agreement between the foreign entity and the petitioner's prior owner; (2) an assignment document, reflecting the transfer of stock to the foreign entity; (3) a "Stock Power" document authorizing the transfer of shares to the foreign entity; (4) a stock certificate issued to the foreign entity; (5) a certificate from the foreign entity authorizing the purchase of the petitioner's stock; (6) the petitioner's Forms 1120, U.S. Corporation Income Tax Return, for 1999 and 2000; (7) the petitioner's 2001 Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return; (8) the petitioner's Forms 940, Quarterly Federal Tax Return, for the first, second, third, and fourth quarters of 2001 and the first quarter of 2002; (9) the petitioner's Annual Federal Unemployment (FUTA) Tax Returns for 2000 and 2001; (10) the petitioner's Florida Corporate Income/Franchise and Emergency Excise Tax Return for 2000 and extension of time to file for 2001; (11) an unaudited income statement for the petitioner for January through May 2002; (12) the petitioner's bank statement for May 2002; (13) the petitioner's 2001-2002 County and City Occupational License; (14) product brochures for the petitioner; (15) a foreign language document purported to be a financial statement for the foreign entity; (16) invoices issued by the foreign entity; and (17) foreign language brochures purported to be promotional materials for the foreign entity.

On July 7, 2002, the director denied the petition. The director determined that the petitioner did not establish that it possesses a qualifying relationship with the beneficiary's foreign employer. Specifically, the director noted that the petitioner's 1999 and 2000 federal tax returns indicate that it holds 500 shares of common stock, and the submitted stock certificate reflects that the foreign entity owns six shares of the petitioner. The director found these three documents to be inconsistent regarding the number of outstanding shares of the petitioner. The director further asserted that the stock certificate issued to the foreign entity was invalid, due to the fact that the date on the certificate omitted the exact day of issuance. The director noted that the petitioner did not submit its 2001 Form 1120 as requested.

The director further found that the evidence of record does not show that the petitioner and the foreign entity have been doing business as defined in the regulation, such that they could be qualifying organizations. In this regard, the director noted that the petitioner's 1999 and 2000 Forms 1120 reveal that it has been operating at a substantial loss. The director stated that the 2000 return reports that no salaries were paid in that year, and only \$8,095 was paid to the beneficiary as an officer of the company. The director further stated that the 1999 return reports that only one officer was compensated, and approximately \$4,500 was paid in salaries for that tax year. The director pointed out that the petitioner's Forms 941 quarterly tax returns for the second,

third, and fourth quarters of 2001 report that there were no employees during those periods, and copies of Form 940 EZ indicate that the petitioner made no unemployment insurance payments during 1999 and 2000. The director stated that, though the petitioner's Form 941 for the first quarter of 2001 indicates that there were 24 employees, in light of the other documents discussed above, it does not appear that the petitioner was conducting regular business with a consistent staff. Regarding whether the foreign entity has been doing business, the director pointed out that a purported audited financial statement for the company was not translated. The only other evidence submitted were two invoices issued by the foreign entity in June 2002, which the director found unpersuasive.

On appeal, counsel for the petitioner asserts that the evidence of record shows that the petitioner and the foreign entity possess a qualifying relationship, and that the director misread and misinterpreted the submitted documents. Specifically, counsel states that the exact day of issuance on the stock certificate was omitted due to a scrivener's error, and such error does not invalidate the document. Counsel highlights that the director misread and misunderstood the petitioner's 1999 and 2000 federal tax forms, as "[t]he '500' referred to in the Decision is not shares, but the 'book value' for tax purposes . . . ." Counsel refers to Schedule K of the returns as evidence that the foreign entity owns 60 percent of the petitioner. Counsel points out that the petitioner did not provide its 2001 Form 1120, as it was granted an extension due to timely filing Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return. In support of these assertions, counsel provided a Form 1120 Schedule K and the petitioner's Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return.

Regarding whether the petitioner and the foreign entity are doing business, counsel states:

**The petitioner is an employer who currently has over 24 employees, together with an L-1 employee ([the beneficiary]), who was sent by the Spanish parent company (60% owner of the US company) to introduce proprietary manufacturing systems into the US. The Spanish parent has 100+ employees and sells its products and services throughout the European Union. The [petitioner], because of its technical knowledge and the transfer of proprietary information from the Spanish parent, sells its products throughout the US, Latin America, and South America.**

(Emphasis in original).

Counsel asserts that the fact that the petitioner has operated at a loss does not indicate that it is not doing business. Counsel provides that the petitioner did not submit more bank statements due to a perception that they would "clutter the file" and sufficient evidence was already contained in the record. Counsel explains that the beneficiary is mostly compensated by the foreign entity, which results in small compensation to officers reported on the petitioner's federal filings. Counsel alleges that the director misinterpreted the petitioner's Forms 941 for the second, third, and fourth quarters of 2001 to reflect that the petitioner had no employees during those periods. Counsel points out that item number "1" on each of the forms requests the number of employees "on March 12, 2001," not the number of employees in each respective quarter. Thus, as the petitioner had no employees on March 12, 2001, each following quarter reported this fact. Counsel highlights that all of these forms show wages were paid, evidencing that there were employees in the second,

third, and fourth quarters of 2001. Counsel further points out that the petitioner's Form 940 EZ indicates that the petitioner made unemployment insurance payments during 1999 and 2000, and the director misread the forms.

Regarding whether the foreign entity is doing business, counsel indicates that a translation was not submitted for the foreign entity's financial statement as the numbers speak for themselves. Counsel alleges that "[t]here was ample information which clearly established the continuing business of the Spanish parent company."

Upon review, counsel's assertions and the submitted documentation do not establish that the petitioner and the foreign entity possess a qualifying relationship. 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 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In 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.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Service (CIS) is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In the instant matter, the petitioner submitted sufficient evidence to show that, on January 11, 1995, the foreign entity acquired six shares of the petitioner, representing a 60 percent ownership interest in the company. As listed above, such evidence includes: (1) a stock purchase agreement between the foreign entity and the petitioner's prior owner; (2) an assignment document, reflecting the transfer of stock to the foreign entity on January 11, 1995; (3) a "Stock Power" document authorizing the transfer of shares to the

foreign entity; and (4) an internal certificate from the foreign entity authorizing the purchase of the petitioner's stock. The petitioner also provided a stock certificate, reflecting that the foreign entity acquired six shares of the petitioner's stock on an unknown day in December 1994. As noted above, the director asserted that the stock certificate is invalid due to its failure to specify the exact date of issuance. Further, the AAO highlights that the date of issuance on the certificate is inconsistent with the transaction date presented in all other submitted documents. However, the date of transfer is consistently provided as January 11, 1995 in all other documents surrounding this transaction. Considering the totality of the evidence, the AAO accepts counsel's assertion that the date on the stock certificate contains a scrivener's error. Thus, the petitioner has established that the foreign entity held a 60 percent interest in it on January 11, 1995.

However, as per the director's request, the petitioner must establish that it has a qualifying relationship with the foreign entity as of the date of filing the present petition, March 12, 2002. *See* 8 C.F.R. § 214.2(l)(3)(i). Other than documents relating to the initial sale of stock described above, the only evidence the petitioner submitted to show a continuing qualifying relationship are the petitioner's Forms 1120, U.S. Corporation Income Tax Return, for 1999 and 2000. Neither of these documents are signed by a representative of the petitioner, which calls into question whether they were submitted to the United States government, and therefore greatly reduces their probative value. These documents alone do not satisfy the petitioner's burden to show a qualifying relationship with the foreign entity. The director provided examples of acceptable evidence to show a qualifying relationship, including copies of corporate bylaws and constitutions which clearly indicate stock ownership, and copies of published annual reports which indicate affiliates and subsidiaries and the percent of ownership held by the parent corporation. Yet, the petitioner elected not to provide such documentation. The record is missing items such as the petitioner's corporate stock certificate ledger, a stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Such documents would allow the AAO to understand the history of the petitioner's stock issuance and transfer during the seven-year period after the foreign entity acquired an interest in the petitioner. While the petitioner has established that the foreign entity acquired a 60 percent interest in January 1995, it has failed to document that the foreign entity maintained its majority interest in the company during the relevant period prior to filing the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO notes that counsel correctly identified an error made by the director in interpreting the petitioner's Forms 1120, U.S. Corporation Income Tax Return. Schedule L, Line 22(b) of the petitioner's Forms 1120 reflects a dollar value of outstanding common stock, not the number of shares issued. Contrary to the director's conclusion, the record lacks sufficient evidence to assess whether this dollar amount is inconsistent with counsel's assertion that the petitioner has issued 10 shares. The director's comment on this issue will be withdrawn.

The AAO further acknowledges that the petitioner properly filed a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, providing it an extension of time to file its 2001 Form 1120. The director implied that the petitioner's failure to submit its 2001 Form 1120 had a negative bearing on whether it has a qualifying relationship with the foreign entity. As the petitioner was under no obligation to file its 2001 Form 1120 prior to responding to the director's request for evidence, the absence of

this document is not material to this matter, and the director's comment on this issue will be withdrawn. Nevertheless, in visa 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. Despite the fact that the petitioner's 2001 Form 1120 was not available, it remains incumbent upon the petitioner to provide sufficient evidence to show a current qualifying relationship.

Regarding whether the petitioner and the foreign entity are doing business, counsel's assertions are not persuasive. As evidence of its business activity, the petitioner submitted an income statement for January through May 2002. As this is an internal, unaudited statement, and it was generated after the date of filing the initial petition, it carries little probative weight regarding whether the petitioner was doing business as of the date of filing the initial petition. The petitioner submitted a bank statement and three sales invoices, dated in May and June 2002 respectively. Yet, as these documents reflect financial and business activity after the date of filing, they do not serve as evidence of whether the petitioner was doing business as of the date of filing the initial petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner's 2001-2002 County and City Occupational License and product brochures do not reflect the petitioner's level and consistency of business regarding these products. Thus, they do not show that the petitioner is engaged in the regular, systematic, and continuous provision of goods or services as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(H).

Counsel alleges that the director misinterpreted the petitioner's Forms 941 for the second, third, and fourth quarters of 2001 to reflect that the petitioner had no employees during those periods. Counsel correctly points out that item number "1" on each of the forms requests the number of employees "on March 12, 2001," not the number of employees in each respective quarter. Counsel claims that, as the petitioner had no employees on March 12, 2001, each following quarter should properly report this fact. However, the petitioner's Form 941 for the first quarter of 2001 states that the petitioner had 24 employees on March 12, 2001. If the petitioner had 24 employees on March 12, 2001, it should have reported this on Forms 941 for the second, third, and fourth quarters of 2001, rather than claiming that the petitioner had no employees on that date. Thus, the petitioner's Forms 941 are inconsistent and do not serve as reliable evidence of the number of staff the petitioner employed during that year. 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).

As discussed above, the petitioner's Form 1120 returns are unsigned, which calls into question whether they were submitted to the United States government, and therefore greatly reduces their probative value. In fact, with the exception of the petitioner's Form 7004 request for a filing extension for 2001, none of the tax filings submitted were signed by a representative of the petitioner, which substantially diminishes their evidentiary value in these proceedings.

Thus, the evidence of record, considered in aggregate, does not meet the petitioner's burden of showing that it is doing business as required by 8 C.F.R. § 214.2(l)(ii)(G)(2).

Further, there is little evidence in the record to show that the foreign entity is engaged in regular business. Counsel alleges that an untranslated document in the record is an audited financial statement, and that the fact that it is provided for numerical figures obviates the need for translation. However, because the petitioner failed to submit certified translations of this document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this document is not probative and will not be accorded any weight in this proceeding. The petitioner submitted two invoices issued by the foreign entity as evidence that it is doing business. However, these invoices are both dated June 5, 2002, after the date of filing the present petition. Again, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 248. Accordingly, these invoices do not support that the foreign entity was doing business as of the date of filing the petition. The only other documentation offered as evidence of the foreign entity's business operations consists of product brochures. However, these brochures, by themselves, do not show the foreign entity's level or consistency of business related to these products, such that the AAO can assess whether it is doing business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). While counsel states that "[t]he Spanish parent has 100+ employees and sells its products and services throughout the European Union," the 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). Thus, the petitioner has not established that the foreign entity is doing business as required by 8 C.F.R. § 214.2(l)(ii)(G)(2).

Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the foreign entity as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the petitioner has established that the beneficiary will be employed in a position that involves specialized knowledge as required in the regulation at 8 C.F.R. § 214.2(l)(3)(ii).

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 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 or procedures.

In the initial petition, the petitioner provided that the beneficiary's proposed duties are "to develop a customer base for exothermic welding of railroad track [and] related products imported from Spain." An attached letter from the foreign entity, dated March 5, 2002, describes the beneficiary's duties in the United States as follows:

During the past 3 years [the beneficiary] has been training [the petitioner's] personnel in the use and application of the Aluminothermic Welding Technology so that it can be implanted & developed in the American market place, as well as developing a customer base for exothermic welding products.

As a second part of his job, he is required to continue overseeing the development of this new technology as well as looking for [a] new line of products related with such technology.

An attached letter from the petitioner, dated March 5, 2002, discusses its purpose for bringing the beneficiary to the United States as follows:

[The beneficiary] is considered by [the petitioner] to be a technical expert in the field of Aluminothermic Welding. He has been advising [the petitioner] for the past three years in the development and manufacture of products sold by the company.

[The petitioner] has been manufacturing equipment for the nation's railroads since 1906. Our principle line of products in the past has been signal railbonds and power feed leads for both railroads and rapid transit systems. . . .

It is the intent of [the petitioner] to continue to introduce and sell new products in the United States that are manufactured by [the foreign entity], of which we at [the petitioner] have no prior technical knowledge. In order to provide that background of expertise, we are requesting that [the beneficiary] be granted an extension of his work visa. He is a graduate Chemical Engineer with a Master's Degree and has the technical knowledge of Aluminothermic Welding that [the petitioner] requires to be successful in the American marketplace.

On May 30, 2002, the director requested additional evidence. In part, the director requested evidence that the beneficiary is to be employed in a specialized knowledge capacity<sup>1</sup>, including: (1) documentation of the

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<sup>1</sup> The AAO notes that, in the director's request for evidence, she requested that the petitioner specify whether it is claiming that the beneficiary is employed in a specialized knowledge capacity, or a managerial or executive capacity. The petitioner responded by indicating that the beneficiary's duties include specialized knowledge, managerial, and executive tasks. However, on Form I-129, the petitioner indicated that it was requesting an extension of the beneficiary's L-1B status as a worker utilizing specialized knowledge. No

special knowledge possessed by the beneficiary of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets; (2) documentation showing that the beneficiary has an advanced level of knowledge or expertise in the organization's processes and procedures; (3) documentation of classes, training, and experience where the beneficiary gaining his specialized knowledge; and (4) a description of how the beneficiary exercises this specialized knowledge in the position with the petitioner and how he exercised it with the foreign entity.

On June 28, 2002, the petitioner submitted a response, including: (1) copies of a diploma and university transcripts for the beneficiary; (2) an untranslated document purported to be an employment contract between the beneficiary and a company called Rail Aluminothermic Welding; (3) untranslated documents purported to be payroll records, paychecks, and evidence of the beneficiary's training while employed with Rail Aluminothermic Welding; (4) a statement from counsel further describing the beneficiary's specialized knowledge. Counsel's statement provides:

[The] Beneficiary's position with [the] Petitioner is as Vice President, Technology and Marketing. His position is of a manager, as well as specialized knowledge. His services are invaluable to the U.S. affiliate. [The] Beneficiary holds a college degree in chemical science and is a highly trained and skilled professional in the very specialized field of exothermic welding. This process is especially beneficial to the railroad industry because it allows the joining of track and related products in place at a much reduced costs [sic] over the processes currently used. It is important to note that this process is proprietary and therefore, the individuals with this type of expertise are not readily available. [The] Beneficiary was sent to the United States [to] introduce the product in the United States and develop a customer base for the product. . . .

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This position requires at least a college degree, extensive experience in the technology of exothermic welding and its used [sic] and processes.

In the denial dated July 27, 2002, the director concluded that the petitioner did not establish that the beneficiary is performing in a specialized knowledge capacity. Specifically, the director stated that:

[s]ince the petitioner has not established that any business activity is being performed, has not demonstrated that any service or product is being provided, and has not demonstrated that a service or product is being provided that requires a specialized knowledge worker, [CIS] cannot conclude that the beneficiary has been acting in a . . . specialized knowledge capacity and will continue to act in that capacity.

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indication was made that the petitioner sought to change the beneficiary's status to L-1A as a worker primarily engaged with managerial or executive tasks. Thus, keeping with the petitioner's representation on Form I-129, the AAO will adjudicate this appeal under the law governing L-1B specialized knowledge workers.

With the appeal, to show that the beneficiary is acting in a specialized knowledge capacity, the petitioner submits previously provided documents, as well as a brief from counsel. In counsel's brief, he states:

A simple review of the documents and the supporting information would have shown that the products offered by the Petitioner are highly specialized and that the Beneficiary is more than qualified. There are currently hundreds of millions of dollars being spent annually in the US on rail upgrades and it is the proprietary information that [the beneficiary] is bring[ing] [sic] to the US company which will allow it to compete for this business. [The beneficiary] is eminently qualified to impart this information. **He has a college degree in Chemical Science (i.e. Engineering) and has extensive post graduate training in exothermic welding . . . . [The] Beneficiary was sent to the US to train the employees of [the] Petitioner in the proprietary process and to market this highly effective and successful process throughout the US, Latin America and South America.**

(Emphasis in original).

On review, counsel has not demonstrated that the beneficiary possesses “specialized knowledge” as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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)).<sup>2</sup> 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

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<sup>2</sup> 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 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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

for his ability to carry out a key process or function which is important or essential to the business' operation.

*Id.* at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, 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.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, 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. 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. 117, 119 (Comm. 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.”)

In the instant matter, the petitioner has not submitted a sufficient explanation and documentation to show that the beneficiary’s expertise constitutes specialized knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D). While the record suggests that the beneficiary is an experienced technician, the evidence does not show that his responsibilities require a greater level of knowledge of the products and processes of the petitioner and the foreign entity than that required of a skilled worker. Counsel asserts that the beneficiary possesses specialized knowledge in the area of exothermic and aluminothermic welding. Counsel states that the beneficiary “has a college degree in Chemical Science (i.e. Engineering) and has extensive post graduate training in exothermic welding.” Yet, to show the beneficiary’s training beyond his college degree, counsel submits numerous documents purported to be evidence of his “extensive post graduate training in exothermic welding.” Although these documents are in a foreign language, the petitioner has only provided brief summaries of their content created by a translator. Because the petitioner failed to submit complete certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner’s claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this evidence is not probative and will not be accorded any weight in this proceeding. Therefore, the record contains no acceptable documentary evidence of the beneficiary’s training in his alleged area of expertise, exothermic and aluminothermic welding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Further, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

To support that the beneficiary has completed training that led to his specialized knowledge, counsel provides the above-referenced untranslated documents of his training and employment with a company titled Rail Aluminothermic Welding. The petitioner has not described Rail Aluminothermic Welding or established that this organization has any connection with the petitioner or the foreign entity. Thus, counsel’s representations imply that the beneficiary gained his expertise by completing training with an outside organization, ostensibly in the processes and products of that outside organization. While the beneficiary’s skills with Rail Aluminothermic Welding’s processes may be valuable for the petitioner, they do not constitute 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 petitioner’s* processes or procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). While counsel refers to the beneficiary’s knowledge of exothermic and aluminothermic welding as proprietary, it appears that this information is not the petitioner’s or the foreign entity’s proprietary information. Additionally, as the record reflects that Rail Aluminothermic Welding is a separate entity, it is assumed that its training is available to those not employed by the beneficiary’s foreign employer or the petitioner. Thus, evidence fails to show that the beneficiary’s knowledge of aluminothermic welding is not generally known by practitioners in the field of welding.

Further, the petitioner has not provided information such that the AAO can compare the beneficiary’s knowledge with that of other staff employed by the petitioner or the beneficiary’s foreign employer. The

record provides no clear account of the number of technical staff employed at either company, or the beneficiary's level of prominence among them. Thus, the AAO cannot determine whether the beneficiary qualifies as "key personnel" within the petitioner's family of companies. *See Matter of Penner*, 18 I&N Dec. at 53.

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. The record does not establish that the beneficiary was employed abroad in a specialized knowledge capacity. For this additional reason, the appeal will be dismissed.

The director further stated that the beneficiary is ineligible for an extension of his status as a matter of law, due to the fact that he was not present in the United States on the date that the petition was filed. On appeal, counsel correctly indicated that the petition was filed on March 12, 2002, at a time when the beneficiary was present in the United States. The director's statement was based on the erroneous understanding that the petition was filed on May 12, 2002, at a time when the beneficiary was outside the United States. Accordingly, the director's comment on the beneficiary's presence on the date of filing will be withdrawn. However, the director correctly noted that 8 C.F.R. § 214.2(l)(15)(i) provides:

If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

As the beneficiary departed the United States while the present petition was pending, and his approval for L-1B status expired during his absence, he would not be eligible for an extension of L-1B status. Yet, had the petitioner established the beneficiary's eligibility, the beneficiary would have been permitted to apply for an L-1B visa at a U.S. Embassy or Consulate abroad, and enter in L-1B status for the approved period. The fact that the beneficiary departed after the petition for an extension was filed did not render him ineligible for the benefit sought, and is not a basis for denying this petition.

In visa 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.