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U.S. Citizenship
and Immigration
Services

D7

File: WAC-04-012-53010 Office: CALIFORNIA SERVICE CENTER Date: **JUL 07 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ 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 California that is engaged in production, import, export, distribution, and transportation of household goods and furniture. The petitioner claims that it is the subsidiary of [REDACTED] located in Israel. The petitioner now seeks to employ the beneficiary for three years as an Account Specialist.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position requires an individual with specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the position of Account Specialist with the petitioner requires specialized knowledge and that the beneficiary's experience with the foreign entity is necessary to perform his prospective duties. In support of these assertions, counsel submits a brief.

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 first issue in the present matter is whether the petitioner has established that the beneficiary's position in the United States will involve specialized knowledge as required by 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 a letter submitted with the initial petition on October 17, 2003, the petitioner described the beneficiary's prospective job duties as follows:

[The beneficiary] will fill the position of Account Specialist of [the petitioner]. As such he will be responsible in the over-all direction of [the petitioner's] customer accounts, sales operations, and in the implementation of [the petitioner's] sales policies pursuant to the objectives set by [the] parent company in Israel. Time to be spent: 25%

Moreover, as an Account Specialist, it is [the beneficiary's] duty to determine the manpower requirements for the sales operation. He plays a significant role in recruitment, hiring and training of sales representatives. He will also plan, coordinate, and direct [the] advertising campaign. He will also confer with clients to determine their requirements and budgetary limitations, utilizing knowledge of [the] service to be offered. Time to be spent: 25%

Likewise, [the beneficiary] will research market conditions in [the] local and regional area to determine potential sales of [the petitioner's] services. He will also establish [a] research methodology and will design [the] format for data gathering, such as surveys, opinion polls, or questionnaires. He will also examine and analyze statistical data to forecast future marketing trends. He will gather data on competitors and analyzes [sic] prices, sales, and methods of marketing and distribution. He will collect data on customer preferences and buying habits. Time to be spent: 20%

[The beneficiary] will review sales account activity reports and financial statements to determine progress and status in attaining sales goals. He will also direct and coordinate formulations of sales programs to provide funding for new and continuing clients to maximize returns and generate more income. Time to be spent: 15%

As the Account Specialist of the U.S. operations, [the beneficiary] will be responsible for expanding, organizing, directing and developing the company's sales capabilities. [The beneficiary] is also expected to set up a solid framework for the growth of the sales operation and to acquire intensive contracts in the United States in order to identify strategic partners and new clients. Time to be spent: 10%

Moreover, it is [the beneficiary's] responsibility to train other account executives to [sic] so that [the beneficiary] can resume his employment at [the] Israeli parent company. Time to be spent: 5%

* * *

[The beneficiary] will be able to execute his assignments in conformity with [the foreign entity's] standards. Bringing his experience and ideas to the [petitioner] where he will exchange ideas with U.S. based personnel is certain to create advances that are crucial to [the petitioner's] competitiveness.

The petitioner further stated the following:

We find it crucial to transfer key personnel with unique knowledge of the formulation and implementation of company policies, business strategies and internal procedures when we enter a new foreign market. In order to assure correct positioning within the market, proper handling and promotion of the characteristics of our services, and upholding of uniformity throughout out international organization in policies formulation and management, we will temporarily transfer [the beneficiary] from our Israeli headquarters to the [petitioner].

On October 30, 2003, the director requested additional evidence. In part, the director requested evidence to show that the duties the beneficiary will perform in the United States "are different or unique from those of other workers employed by the petitioner or other U.S. employers in this type of position." The director further instructed the petitioner to "[e]xplain, in more detail, exactly what is the equipment, system, product, technique, or service of which the beneficiary . . . has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad."

In a response dated December 17, 2003, in part the petitioner submitted a letter that repeated the beneficiary's job description as quoted above. The petitioner reiterated that it "offers its clients local, long-distance and International moving, residential, office and commercial moving," as well as "household and office storage, pick-up and delivery services." The petitioner stated that "[i]t is crucial . . . for [it] to retain [the beneficiary's] expertise and specialized knowledge in Account management. His familiarity with internal procedures of [the

foreign entity] will be especially beneficial to the [petitioner.]" The petitioner submitted copies of job announcements that it posted on the Internet for the position of Account Specialist, and stated that it was unable to locate any qualified candidates.

On January 15, 2004, the director denied the petition. In part, the director determined that the petitioner failed to establish that the prospective position requires an individual with specialized knowledge. The director stated the following:

The description of the position, while purporting the need for specialized knowledge, does not portray a position that could not be filled by a qualified individual with experience in the field at large, and be trained in any specifics of the duties required by this particular company. The evidence in the petition as submitted does not adequately display that the position to be filled necessarily requires a specified level of specialized knowledge regarding the petitioner's product and/or services.

On appeal, counsel for the petitioner asserts that the position of Account Specialist with the petitioner requires specialized knowledge. Counsel states that "[t]he Nature and Complexity of the processes and procedures of operations of [the petitioner] necessitate the requirement for a specialized Accounts Specialist." Counsel provides a list of processes and procedures involved with the petitioner's operations, including tasks in furniture design and manufacture, market research and sales activities, labor, import and export planning, and accounting. Counsel further describes the beneficiary's prospective duties in the United States. Counsel states that "due to the parallel approach of both companies and similar company structure, the knowledge learned by [the beneficiary] can be gained only through his experience with [the foreign entity]." Counsel asserts that the director's decision is not in accord with an internal memorandum from former Immigration and Naturalization Service Commissioner James Puleo entitled "Interpretation of Specialized Knowledge," dated March 19, 1994. Counsel notes that the Puleo memorandum provides that whether there are qualified workers in the United States that could perform the prospective position is not a consideration in these proceedings.

On review, the petitioner has not demonstrated that the beneficiary's prospective position requires "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 the director's request for evidence, he specifically instructed the petitioner to provide more detail regarding the beneficiary's prospective duties, and to explain how those duties will be "different or unique from those of other workers employed by the petitioner or other U.S. employers in this type of position." In response, counsel merely repeated the job description provided with the initial petition. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

On appeal, counsel now provides greater explanation of the beneficiary's prospective tasks. Yet, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the additional explanation of the beneficiary's duties to be considered, it should have submitted it in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the job description submitted on appeal in counsel's brief. Consequently, the appeal will be adjudicated based on the job description submitted to the director.

In examining whether a position requires specialized knowledge, 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 that it involves 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)).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' 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

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 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.

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 duties of the account specialist with the petitioner are common to most account executives or sales managers in the industry. The duties do not contain tasks that clearly involve prior knowledge of products and procedures that are specific to the petitioner or foreign entity. Further, the petitioner has not shown that its services, such as fabricating or moving furniture, are unique in nature or otherwise distinguished from those of similar companies. For example, counsel states that the petitioner will design furniture, yet the petitioner has failed to submit examples of such designs or explanation of how they

differ from other companies' products, such that prior knowledge of the petitioner's designs is required in order to effectively serve as an account specialist. 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)).

While the petitioner provides that "[the beneficiary] will be able to execute his assignments in conformity with [the foreign entity's] standards," this general statement is not sufficient to show the involvement of specialized knowledge. It is understood that the petitioner will require all of its employees to follow certain business practices and established procedures. The fact that an employee is required to follow general company procedure does not render his or her position one involving specialized knowledge. The petitioner has not described any of the foreign entity's standards such to distinguish them from the standards of all companies. Again, 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. Greater explanation is required to show that the position requires knowledge and experience that is unusual, different or uncommon, such that it is distinguished from other account executive or sales manager positions in the field.

The petitioner submitted copies of job announcements that it posted on the Internet in attempt to fill the prospective position. The petitioner noted that it was unable to locate any qualified candidates. Counsel correctly notes that the petitioner is not required to make an attempt to recruit a worker for the position from the general American workforce. Yet, the fact that the petitioner placed numerous public employment advertisements on the Internet for the position over a four-month period calls into question whether it requires an employee with specialized knowledge of its products or procedures. In fact, the advertisements each state that the minimum requirement for the position is four years of experience in sales. Nowhere do the advertisements reference prior experience with the petitioner or foreign entity.

Based on the foregoing, the petitioner has failed to explain how previous experience with the foreign company is required in order to successfully perform the beneficiary's prospective duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner has not demonstrated that the beneficiary's prospective position requires "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). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the petitioner has established that the beneficiary's prior employment abroad was in a position that involved specialized knowledge, such that the beneficiary possesses specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(iv).

In a letter submitted with the initial petition, the petitioner described the beneficiary's prior experience with the foreign entity as follows:

As the Sales Manager of the Parent company in Israel, [the beneficiary] developed and established goals, strategic policies to achieve effective market developments and efficient operations. He was responsible for service strategy, service planning, quality monitoring and

quality feedback. Serving in this key position, he was also responsible for customer service operations, customer relations and marketing support, and system evaluation based on customer service. Besides, [the beneficiary] coordinated all essential functions between divisions; liaised with outside distributors and professionals, and reviewed and evaluated all proposals for improving business efficiency.

In the director's request for evidence, in part he instructed the petitioner to "[e]xplain how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in this particular field."

In response, the petitioner stated that the beneficiary owned and operated his own furniture retailing business from August 1987 to September 1999. The petitioner further provided the following:

In September 1999, [the beneficiary] joined [the foreign entity] as a Sales Manager. As such, [the beneficiary] was in charge of all aspects of sales operations, marketing decisions, [and] sales promotions.

[The beneficiary] has successfully completed the parent company's in-house training program for an Account Specialist. Through this program, [the beneficiary] obtained knowledge in all aspects of sales and account management.

Further, his progressive work experience with the Israeli parent company made him the only ideal candidate for this position in the U.S. company.

In denying the petition, the director found that the petitioner failed to establish that the beneficiary possesses specialized knowledge. The director stated the following:

[T]he beneficiary has not been shown to be serving in a specialized knowledge capacity with respect to the petitioner's product or service. Nor has the beneficiary been shown to possess an advanced, exclusionary level of knowledge of the processes and procedures of the petitioner's company The petitioner has not established that the beneficiary's knowledge is not merely general knowledge or expertise which enables them to provide a service.

In his appellate brief, counsel repeats the description of the beneficiary's duties with the foreign entity as submitted with the initial petition.

On review, the petitioner 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).

The description of the beneficiary's duties abroad reflects that he was responsible for a range of duties commonly associated with sales management positions. Thus, prior experience working with the petitioner's products or providing the petitioner's services does not serve as prima facie evidence of specialized

knowledge. The petitioner stated that "[the beneficiary] was responsible for service strategy [and] service planning." Yet, it failed to provide examples of such strategies or plans that would indicate whether they are unique to the foreign entity's operations. Again, 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. The job description does not reflect that the beneficiary's activities resulted in specialized knowledge.

The director requested that the petitioner "[e]xplain how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in this particular field." The petitioner provided that the beneficiary "successfully completed the parent company's in-house training program for an Account Specialist," which led to "knowledge in all aspects of sales and account management." Yet, the petitioner failed to provide sufficient detail regarding this training program, such as the particular subjects studied, the duration, or the number of employees included in comparison to the foreign entity's entire staff. Again, 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. The petitioner failed to respond to the director's request to compare the beneficiary's training to that of other employees or workers. The 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).

The petitioner referenced the beneficiary's progressive work experience in response to the director's request for evidence. As discussed above, the petitioner has not established that its products or services are proprietary or unique, such to show that merely working with the foreign entity for a lengthy period would provide uncommon skills or experience.

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*, *supra* at 16. Based on the evidence presented, it is concluded that the beneficiary was not employed abroad in a specialized knowledge capacity. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i). On the initial petition, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer, as the foreign entity owns 51 percent of the petitioner's outstanding stock. The petitioner provided that 25 percent of its stock is owned by ██████████ and 24 percent is owned by ██████████. The petitioner provided copies of stock certificates that reflect that, on April 6, 2002, the foreign entity acquired 510 shares, ██████████ acquired 250 shares, and ██████████ acquired 240 shares. However, the petitioner's Minutes of Organizational Meeting, also dated April 6, 2002, states that ██████████ acquired 600 shares for \$48,000 and ██████████ acquired 400 shares for \$32,000. The petitioner's 2002 IRS Form 1120, U.S. Corporation Income Tax Return, Schedule K, reflects that ██████████ owns 50 percent of the petitioner. Wire transfers for establishment of the petitioner came from five separate individuals. Thus, the petitioner has provided inconsistent evidence of its ownership, and therefore has not established that it is a subsidiary of the foreign

entity. See 8 C.F.R. § 214.2(l)(1)(ii)(K). Further, the petitioner indicated that the foreign entity is owned by a single individual, [REDACTED]. As this individual does not own an interest in the petitioner, it has also not been shown that the two entities are affiliates due to common ownership and control. See 8 C.F.R. § 214.2(l)(1)(ii)(L). For this additional reason, the petition may not be approved.

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 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.