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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 117 52441 Office: CALIFORNIA SERVICE CENTER Date: JUN 07 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 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 its director as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 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 Illinois engaged in the import, retail sale and wholesale of fine jewelry. The petitioner claims that it is the subsidiary of MKS Co., Ltd. located in Koyang City, Korea. The beneficiary was initially granted a one-year period of stay to be employed in a specialized knowledge capacity in a new office, and the petitioner now seeks to extend his stay for a two-year period.

The director denied the petition concluding that the petitioner has not established that the beneficiary will be employed in a capacity involving specialized knowledge.

On appeal, former counsel for the petitioner states that the director's decision was based upon an incorrect application of the law and contends that the petitioner clearly established that the beneficiary possesses specialized knowledge as defined by the regulations and Citizenship and Immigration Services (CIS) policy guidance. The petitioner's former counsel and current counsel have both submitted additional evidence in support of the appeal.

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) 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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in the present proceeding is whether the beneficiary will be employed by the United States entity in a specialized knowledge capacity.

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.

The petitioner stated on the Form I-129 Petition that the beneficiary would continue to serve as the petitioner’s director under the extended petition, performing the following responsibilities:

Beneficiary will continue to manage and direct [the petitioner.] He will research potential markets, franchises, and other customers, and estimate future revenues. He will solicit new

customers, suggest new jewelry designs based upon market research, and report progress to [the foreign entity.] He will establish new franchises or retail stores, oversee all [the petitioner's] franchising, product development, personnel management.

In a February 27, 2003 letter appended to the petition, the petitioner stated that the United States company's success would be "wholly dependent upon [the beneficiary's] efforts and guidance." With respect to the beneficiary's specialized knowledge qualifications, the petitioner stated:

[The beneficiary] has been employed by [the foreign entity] and its affiliated companies for nearly a decade. He has held numerous positions with [the foreign entity], including Assistant Manager, Sales Manager, Domestic Marketing Manager, and Overseas Sales Manager. Because he has held so many varied positions during the course of his career with [the foreign entity], [the beneficiary] has gained intimate knowledge of [the petitioning organization's] manufacturing operations, design and development procedures, marketing strategies, management, pricing, and product lines. Thus, [the beneficiary] possesses "specialized knowledge" as defined by 8 CFR §214.2(l)(1)(ii)(D).

The petitioner did not submit any supporting documents to substantiate its claims that specialized knowledge is required to fulfill the duties of the proffered position, nor evidence to establish that the beneficiary possesses specialized knowledge.

In a request for evidence, dated April 8, 2003, the director requested additional evidence to establish that the beneficiary has specialized knowledge. Specifically, the director requested that the petitioner submit: (1) an organizational chart for the foreign company and the number of employees at the foreign location; (2) the U.S. company's organizational chart showing the beneficiary's position, the number of employees supervised, and the total number of employees at the location where the beneficiary is employed; (3) information regarding the number of foreign nationals employed at the location where the beneficiary is employed, including their job titles and visa status; (4) information regarding the number of persons holding the same or similar position as the beneficiary in the U.S., including an explanation as to how many other employees perform the same duties and how the beneficiary's duties were performed prior to the beneficiary's transfer to the United States; (5) an explanation as to how the duties performed by the beneficiary overseas and in the United States are different or unique from those of the workers employed by the petitioner in the same type of position; (6) an explanation as to the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and whether it is used or produced by other employers in the United States and abroad; (7) an explanation as to how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in the field; and (8) a description as to the impact on the petitioner's business if the petitioner is unable to obtain the beneficiary's services, and what alternative action would be taken to fill the responsibilities.

In response to the director's request for evidence, former counsel for the petitioner asserted that the director's requests were overly burdensome and irrelevant to a determination as to whether the beneficiary possesses specialized knowledge. Although counsel stated that the director's requests were contrary to Citizenship and Immigration Services [CIS] policy, the petitioner did respond to each request contained in the request for

evidence. In a letter dated April 18, 2003, counsel described the beneficiary's "special or advanced duties" as follows:

The beneficiary, as Director of the U.S. company clearly has "unique duties" as compared to the other employees of the U.S. petitioner company. As indicated in the support letter, the beneficiary will continue to manage and develop [the petitioner.] He will research potential markets, franchises, and other customers, and estimate future revenues. He will solicit new customers, suggest new jewelry designs based upon market research, and report progress to [the foreign entity.] Specifically, the beneficiary targets small and large businesses to provide award cards, gold picture frames, and other "awards." He will supervise the creation of sample displays, establish points of contact with new stores and companies, develop a website, oversee the continued production of a catalogue, and design and develop smaller "kiosks" for placement in malls. In the future, he will establish new franchises or retail stores, oversee all [the petitioner's] employees, and oversee the finance and accounting functions. For existing customers, he will assist with the design of custom orders, forward orders to the parent company, and will facilitate the overseas manufacturing of the orders.

Counsel further stated that the petitioner's other employees are primarily responsible for management or sales from the company's retail store and do not have the beneficiary's "marketing budgeting or client development responsibilities." Counsel further stated that the parent company manufactures a "proprietary line" of jewelry and that the beneficiary has "special and advanced" knowledge of the following:

- The International, Korean and U.S. jewelry market;
- Gold, silver, gems, stones, etc., used in the manufacture of fine jewelry;
- International jewelry exhibitions and conventions;
- The petitioner company's manufacturing techniques and manufacturing systems;
- The petitioner company's accounting and materials handling systems;
- The petitioner company's product lines and inventories;
- The petitioner company's shipping procedures and timelines;
- The petitioner company's sales prices and manufacturing costs;
- The petitioner company's employee management strategies; and
- The petitioner company's sales and marketing techniques.

In response to the director's request for a description of the beneficiary's training, the petitioner indicated that the beneficiary had been employed with the Korean parent company for nearly a decade and listed his various job titles as a "Quality Assistance Manager," "President," "Manager of Domestic Marketing," "Manager of Overseas Sales," and "Director of Overseas Marketing and Planning." The petitioner further stated that, in contrast, the U.S. company's other employees have been employed with the company for no more than two years and have not been exposed to the international marketing and sales practices of the parent company in Korea. The petitioner concluded that it had established that the beneficiary has knowledge which is specialized and advanced, and further noted that the director's requirement that his training be "exclusive and unique" was overly burdensome.

On May 21, 2003, the director denied the petition concluding that the petitioner had not established that the beneficiary would be employed in a specialized knowledge capacity. The director noted that the beneficiary has not been shown to possess specialized knowledge of the petitioner's product, nor an advanced level of knowledge of the petitioner's processes and procedures. Finally, the director stated that the petitioner had not established that the beneficiary possesses knowledge beyond general knowledge or expertise which enables him to provide a service.

In an appeal submitted on June 20, 2003, the petitioner's former counsel asserts that the director's decision was based upon an incorrect application of the law. Counsel also refers to a 1994 INS (now Citizenship and Immigration Services (CIS)) memorandum as a guide for interpreting the statutory definition of specialized knowledge. Memorandum from [REDACTED] Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). Counsel states that the memorandum substantiates his claim that the beneficiary (1) has knowledge which is different from that found in the industry; (2) has advanced knowledge that is narrowly held within the company; (3) has knowledge that is valuable to the petitioner's competitiveness in the marketplace; (4) has been utilized abroad in a capacity involving significant assignments which have enhanced the petitioner's business; (5) has knowledge which can only be gained through prior experience with the company abroad; and (6) has knowledge that cannot be easily transferred to another employee. In support of these assertions, the petitioner submits a document drafted by the beneficiary entitled "Understanding Jewelry and the U.S. Market," another copy of the beneficiary's resume, a company catalogue, and sample invoices, customs forms and shipping documents for the petitioner, as further evidence of the beneficiary's specialized knowledge. The petitioner's former counsel asserts:

These documents confirm that the Beneficiary has been employed by the foreign parent company for more than a decade, in various capacities. He is intimately familiar with the company's product lines, quality control procedures, raw material types, sources and prices, labor costs for his company's manufacturing, employee management, inventory, payroll, accounting, the company's customers in Asia and the U.S., the shipping/receiving procedures for the U.S. company from the company overseas, jewelry designers, and the company's marketing strategies both in the U.S. and internationally. He regularly attends international jewelry trade shows and travels worldwide to promote the company's business. He is responsible for receipt of overseas shipments to the U.S. and is the designated agent for [the petitioner] for customs purposes.

In addition, the Beneficiary has helped develop the company's e-business practice. They plan to expand their services to provide all aspects for a web-based jewelry business, including website design, catalogue creation and maintenance, software management for inventory and client service, digital imaging for web sites and catalogues. [The petitioner] has started development of a proprietary system for its web-based business, with the Beneficiary an essential part of the development team. The Beneficiary's education in electrical engineering and training in the jewelry market makes him uniquely qualified to advance this business plan into the future.

The petitioner's current counsel submitted additional evidence on March 16, 2004, the majority of which has no bearing on the issue of whether the beneficiary has specialized knowledge and/or was previously submitted.

It is noted that the document entitled "Understanding Jewelry & U.S. Market," written by the beneficiary and submitted on appeal, provides a summary of the beneficiary's specialized knowledge qualifications. Specifically, the beneficiary states:

I have special knowledge:

- [G]eneral concept of jewelry
- Experience [sic] jeweler for a long time
- How to manufacture jewelry
- Pricing in domestic and international trading
- Majored in university with electronics
- Understand U.S. jewelry market and Korean market
- Can make complete e-solution with the understanding of computer algorism [sic] and jewelry.
- Have special knowledge in taking digital images with digital camera.
- Have many years of experience in international trading
- Have an understanding in the trend of jewelry

I have these special knowledge, which is a combination of jewelry and computer, that nobody has.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary would be employed by the U.S. entity in a position requiring 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). 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. *See 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>1</sup> As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52

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

(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.

Here, the beneficiary's proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. For example, the beneficiary's responsibilities of managing the company, researching potential markets, estimating revenues, soliciting customers, receiving deliveries, developing a web site, attending trade shows, reporting progress of the United States entity, establishing new retail locations and managing personnel are all tasks typically performed by any individual tasked with overseeing a start-up operation in a new market. If CIS were to follow the petitioner's reasoning, any foreign worker transferred to the United States to open a new office would qualify for L-1B status as a specialized knowledge worker. The record is devoid of any documentary evidence that the beneficiary's position involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. While the petitioner claims that the beneficiary utilizes specialized knowledge of the petitioner's manufacturing techniques, management systems, materials handling systems, accounting systems, shipping procedures, product lines, and shipping procedures, the petitioner has not described how he utilizes this knowledge, provided evidence or otherwise described the systems and procedures used by the petitioner's group, or adequately explained how the beneficiary gained his claimed specialized knowledge, other than listing his various job titles with the foreign company. 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)).

Additionally, the petitioner has not submitted any evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other managers employed within the petitioner's group or working for other employers within the jewelry industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. 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 term "specialized knowledge" is relative and cannot be plainly defined. 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 reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average

employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Here, the petitioner has indicated that the beneficiary possesses specialized knowledge as a result of his employment with the foreign entity, which gave him "intimate knowledge" of the foreign company's procedures and practice" that is "significantly more detailed than the knowledge that is generally found in the jewelry industry." The petitioner further states that his knowledge is advanced and "narrowly held" within the company, noting that no other employees were transferred to the United States. However, the fact that the beneficiary was chosen for transfer to the United States does not establish that his knowledge of the company's products or processes is advanced compared to the knowledge possessed by others within the company. Counsel further states that the beneficiary has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's business, and again lists the various job titles held by the beneficiary with the foreign company. Again, other than asserting that the beneficiary has attended "numerous" international jewelry conventions, the petitioner does not attempt to substantiate its claim that the beneficiary has been utilized in significant assignments. The record contains no detailed employment history for the beneficiary, and the petitioner does not claim that he received any special training, such that the AAO could determine exactly what "special" or "advanced" knowledge the beneficiary possesses or how he acquired it. Finally, the petitioner states that the beneficiary's knowledge could only be gained by prior experience with the company abroad and that his "corporate knowledge" could not easily be transferred to another employee. Again, no evidence is submitted to substantiate counsel's claims on appeal. 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. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner indicates that merely working for the foreign entity for a significant length of time in "various positions" is sufficient to bestow "special knowledge" or an "advanced level of knowledge." While it may be correct to say that the beneficiary is a productive and valuable employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, supra at 50 (citing H.R. Subcomm. 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 that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker, or the petitioner's reasoning that any employee chosen to open a new office in the United States should be deemed to possess specialized knowledge.

The AAO notes that the only evidence submitted to substantiate the petitioner's claim that the beneficiary possesses specialized knowledge includes the beneficiary's brief resume, shipping documents and invoices showing the beneficiary as the petitioner's primary contact for billing and import matters, and a document written by the beneficiary, in which he provides an overview of the jewelry industry, the Korean and U.S. markets, a description of the foreign and U.S. entities, and a summary of his own "special knowledge." The AAO notes that, while the beneficiary claims to have a "unique" combination of knowledge related to computers and the jewelry industry in general, none of his claimed knowledge relates to the petitioner's products, processes or other interests.

Finally, counsel's reliance on the 1994 memorandum is misplaced. It is noted that the memorandum was intended solely as a guide for employees and will not supercede the plain language of the statute or the regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. Specifics are clearly an important indication of whether a beneficiary's duties encompass specialized knowledge; otherwise meeting the definition would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor.

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. Based on the foregoing, the record does not establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

An additional issue not addressed by the director is whether a qualifying relationship exists between the foreign and U.S. entities as required in the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B). The regulations and case law further confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are ownership and control. *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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, supra* at 595.

In the present matter, the petitioner stated that the petitioner is a wholly-owned subsidiary of the foreign company. The petitioner's articles of incorporation indicate that the United States company is authorized to issue up to 100,000 shares at no par value, and that the company proposed to issue 1,000 shares for consideration of \$1,000. The petitioner did not submit copies of its stock certificates, stock registry or any other documentation that would establish that the foreign company in fact owns the petitioning company. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not demonstrated that a qualifying relationship exists between the beneficiary's foreign employer and the petitioning entity. 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 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.