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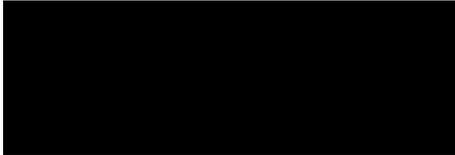
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IN RE: Petitioner:
Beneficiary:



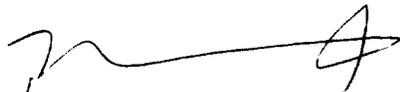
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Vermont 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 general manager as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of New York that is engaged in the import and distribution of surgical and dental instruments. The petitioner claims that it is the subsidiary of Aroma Surgical Company located in Sialkot, Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's status for three years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a specialized knowledge capacity, or that the beneficiary possesses 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 disputes the director's findings and asserts that the petitioner submitted sufficient evidence to establish that the position offered to the beneficiary requires the services of an individual possessing specialized knowledge. The petitioner also contends that the beneficiary possesses specialized knowledge of the foreign entity's products and applicable U.S. import regulations, as well as advanced knowledge of the company's processes. Finally, counsel asserts that the director's decision was arbitrary and is not based upon the evidence in the record. In support of these assertions, counsel submits a brief and additional evidence.

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. 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 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)(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.

At issue in the present matter is whether the beneficiary possesses specialized knowledge and would 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 filed the instant nonimmigrant petition on July 13, 2002, indicating that the beneficiary would be continuing L-1B employment in the United States as its general manager. In a statement submitted with the initial petition, the petitioner stated that the foreign entity is a manufacturer and exporter of dental and surgical instruments which exports to Singapore, Malaysia, Indonesia, New Zealand and the United States. The U.S. petitioner was established in January 2001 to import and distribute dental and surgical instruments manufactured by the foreign entity, and the beneficiary was transferred to the U.S. in L-1B status "to develop and direct the new U.S. subsidiary, to expand the company's business in the U.S., increasing its exports and distribution of its dental and surgical instruments in the U.S." The petitioner further explained that the beneficiary was employed by the foreign entity for a three-year period as a "Sales and Marketing Partner" where he determined demand for the company's products, identified potential customers, developed pricing strategies, ensured customer satisfaction, and monitored industry trends. The petitioner stated that the beneficiary supervised five employees engaged in quality control and packaging, and that he traveled extensively to meet with the foreign entity's current and potential clients in Singapore, Malaysia, Dubai, Muscat, Saudi Arabia, England, the Philippines, Kuwait and Thailand.

In the statement appended to the petition, the petitioner explained the beneficiary's United States position as general manager and specialized knowledge qualifications as follows:

[The beneficiary] possesses specialized knowledge which is not general knowledge held commonly throughout the industry. [The beneficiary] possesses specialized knowledge of the import requirements of surgical and dental instruments. The import into the U.S. of surgical and dental instruments is highly regulated by the U.S. Food and Drug Administration. This business is highly sophisticated and competitive, as [the beneficiary] must ensure that the dental instruments and surgical instruments comply with detailed and stringent FDA requirements, as well as customer specifications. Not all imports of surgical and dental instruments are required to have FDA approval. For example, imports of surgical instruments from Germany and other European countries do not have to pass FDA approval. FDA approval is only required for certain countries, such as Pakistan, and other third world countries. Thus for example, a U.S. firm importing surgical instruments from Germany and Poland would not have to be knowledgeable about the FDA requirements. Additionally, a U.S. based manufacturer is not familiar with import requirements applying to third world countries.

Thus, each shipment of dental and surgical instruments coming into the U.S. from Pakistan is held by customs pending FDA approval. [The beneficiary] must answer detailed technical questions posed by the FDA regarding the instruments included in the shipment, and provide the full specifications of the instruments to the FDA. Only a person with specialized knowledge of the composition and design of the hundreds of varieties of surgical and dental instruments is capable of interacting with the FDA personnel, and answering their technical questions. The FDA takes samples of the shipment, and sends them to the laboratory for

analysis. During the one-month period required for FDA analysis, the shipment cannot be sold. Once the FDA approves the shipment, it is released for sale. However, if any of the samples do not meet the FDA's standards, the importer is required to destroy the entire shipment. The penalty for not destroying the shipment is a \$10,000 fine and a prison term. Thus, the consequences of not meeting FDA requirements is very costly – the loss of tens of thousands of dollars worth of instruments.

Additionally, specialized knowledge of the composition, design and use of surgical and dental instruments is required to answer customer concerns and complaints. The position requires [the beneficiary] to explain in technical terms to the customers the specifications of the instruments. Additionally, if customers have complaints about the instruments, or request the modification of a particular kind of instrument, specialized knowledge is required to understand the customers and to respond to their concerns. Additionally, specialized knowledge is required to communicate to the manufacturer in Pakistan complaints about the manufacture, and instructions regarding modifications of instruments. [The beneficiary] has specialized knowledge of more than 500 varieties of surgical instruments, 500 varieties of dental instruments, 100 varieties of optical instruments and 100 varieties of manicure instruments.

Specialized technical knowledge of surgical and dental instruments is also required for marketing and developing new clients. [The beneficiary] must explain to potential customers how the composition, design and manufacture of [the petitioner's] surgical and dental instruments is superior to that of its competitors.

Finally, [the beneficiary] is in charge of directing and developing the new business in the U.S. Thus extensive experience in managerial positions is required in order to develop and direct the new business and to create its policies and practices.

[The beneficiary] has specialized knowledge of dental instruments and surgical instruments, and quality control regulations in the U.S. and other international markets, as well as an advanced level of knowledge of the processes and procedures of the company.

The petitioner submitted a letter from its claimed Pakistani parent company, confirming the beneficiary's employment as its sales and marketing partner from November 1998 to 2001. The petitioner also submitted a letter from the beneficiary's former employer in Pakistan, Al Riaz & Co. Pak. (Pvt) Ltd., where he worked as an Import Director from 1986 to November 1998, and was responsible for oversight of quality control for dental instruments, import of raw materials to Pakistan, and exports of dental and surgical instruments to Singapore, the Philippines, Indonesia, Thailand, Dubai, Saudi Arabia and the United Kingdom.

The director issued a request for additional evidence on August 23, 2002, stating that the record was not persuasive in demonstrating that the beneficiary has truly specialized knowledge or that the beneficiary has been and would be employed in a truly specialized knowledge capacity. The director asked that the petitioner submit the following: (1) evidence verifying that the beneficiary's knowledge is uncommon, noteworthy, or

distinguished by some unusual quality and is not generally known by practitioners in the beneficiary's field of endeavor; (2) evidence that the beneficiary's advanced level of knowledge of the company's processes and procedures distinguishes him from those with elementary or basic knowledge; (3) evidence to substantiate that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly special or advanced, including evidence that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace; (4) evidence that the beneficiary is qualified to contribute to the employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry; (5) evidence to verify that the beneficiary has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position, and that he possesses special knowledge which normally can be gained only through prior experience with that particular employer; (6) verification that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; and (7) evidence that the petitioning organization would experience a significant interruption in business in order to train a replacement employee for the beneficiary.

The petitioner responded in a letter from the foreign entity's partner, dated October 7, 2002, stating that during his three years as sales and marketing partner with the Pakistani company, the beneficiary achieved a 250% increase in the value of the company's exports. The partner attributed this success to the beneficiary's specialized knowledge of "all kinds of dental and surgical instruments." The partner states:

The import requirements established by the FDA's Good Manufacturing Practices (GMP) for imports from Pakistan are highly detailed and "known only to those who have dental and surgical manufacturing business in Pakistan [sic] (which are very few) and certain other third world companies and export to the U.S. This knowledge is not held by those importing products to the U.S. generally, nor is this knowledge held by those exporting dental and surgical instruments to the U.S. from European and other countries.

This knowledge is highly specialized and known only to a few, and takes many years to develop an expertise. Prior to joining our company, [the beneficiary] already had 12 years of experience in this area of surgical and dental manufacture and export. to [sic] be able to export to the U.S. from Pakistan [sic] requires approval of the company manufacturing processes by the FDA.

It would take at least five years to train someone to be minimally competent in this specialized area of surgical/dental instruments manufacture and export to the U.S. Additionally, because the position requires the individual to work alone and unsupervised, even more experience would be required. Thus, there would be a significant interruption in business to train a U.S. worker.

As discussed above, our manufacturing procedures and methods of operation are highly specialized, having been approved by the FDA. Anyone not specifically knowledgeable about our manufacturing processes and methods would jeopardize entire shipments to U.S., causing significant losses in income and also our FDA approval, jeopardizing our entire U.S. market.

Also in response to the request for evidence, counsel submitted a letter dated October 9, 2002, which repeats in its entirety the job description provided with the initial petition. The only additional information regarding the beneficiary's duties is the following:

[The beneficiary] spends about 45% of his time maintaining existing customers and about 15% of his time developing new clients. He spends about 15% to 20% of his time with the FDA and Customs. He spends about 20% of his time on administrative duties necessary to run a business, and formulating the company's policies and procedures.

In her letter, counsel notes that the beneficiary possesses specialized knowledge that is not general knowledge held commonly throughout the industry, and that he "possesses specialized knowledge of the import requirements of surgical and dental instruments specifically pertaining to imports of Pakistani-manufactured instruments into the U.S."

In support of its response to the request for evidence, the petitioner also submitted: (1) an excerpt from the public Internet site of the FDA, which provides an overview of the Good Manufacturing Practices (GMP)/Quality System (QS) Regulation; (2) an excerpt from the public Internet site of the FDA which provides an overview of labeling requirements under the Quality System Regulation; and (3) a copy of the FDA's draft guidance for FDA staff on its Civil Money Penalty Policy under the Safe Medical Devices Act of 1990, released for comment in June 1999.

In a decision dated April 24, 2003, the director determined that the petitioner did not demonstrate that the beneficiary would be employed under the extended petition in a specialized knowledge capacity. The director also concluded that the petitioner had not shown that the beneficiary possesses specialized knowledge. The director stated that the duties outlined by the petitioner do not appear to be significantly different from those of any manager in any dental and surgical equipment firm and therefore do not establish that they warrant the expertise of someone possessing truly specialized knowledge. The director acknowledged the petitioner's claim that the position requires someone who has knowledge of different types of surgical and dental instruments, but noted that the petitioner had not demonstrated that its surgical and dental instruments are significantly different from those of other manufacturers, or how understanding of them constitutes "specialized knowledge." The director also stated that it is not unusual for a manager to possess an in-depth knowledge of the systems and functions of the organization, and is not indicative of the beneficiary's claimed advanced expertise. Further, the director noted that the petitioner's explanation of the duties seems to merely paraphrase the regulatory definition of specialized knowledge. Lastly, the director noted that the petitioner did not document how the beneficiary's knowledge of the processes and procedures of the organization are substantially different from, or advanced in relation to, any individual similarly employed.

Counsel for the petitioner submitted an appeal on May 27, 2003. In a brief submitted on May 13, 2004, counsel claims that the director improperly applied the applicable statute and regulation governing the instant matter and incorrectly examined the evidence on record. Counsel also contends that CIS' denial of the petition contradicts prior case law and CIS guidance for interpreting the statute defining specialized knowledge.

Counsel states on appeal that the U.S. position absolutely requires an individual with specialized knowledge of the importation requirements and manufacturing procedures of surgical and dental instruments from Pakistan. Citing *Matter of Penner*, 18 I&N Dec. 49 (Reg. Comm. 1982), counsel asserts that “the test for specialized knowledge is whether a person is to be employed primarily for his or her ability to carry out a key process or function which is important or essential to the business firm’s operation.” Counsel contends that the beneficiary’s position within the U.S. company requires him to ensure that all of the imported instruments comply with stringent FDA requirements and meet customer specifications, and again notes the special restrictions imposed by the FDA on imports from Pakistan and “certain countries,” and reiterates the potential penalty imposed by the FDA if shipments do not meet requirements. In support of these assertions, counsel submits an FDA document entitled “Revision of Import Alert #76-01, *Automatic Detention of Surgical Instruments from Pakistan*,” and an opinion letter from Sherry L. Singer, an attorney specializing in customs and international trade law and regulatory compliance. Counsel concludes with the following:

An advanced level of knowledge of the processes and procedures of the Petitioner’s company is critical to the successful performance of the beneficiary’s position because the consequences for not meeting FDA requirements are extremely costly. Consequently, in order for an individual to adequately perform the duties of the Beneficiary’s current position, it is necessary for that person to have specialized knowledge of the Petitioner’s products and the processes involved in the importation of these products to the United States.

With regard to the level of knowledge possessed by the beneficiary, counsel contends that the beneficiary possesses a special and advanced knowledge far greater than the general knowledge commonly held throughout the industry. Counsel quotes from an April 23, 2004 CIS memorandum which states that in matters relating to extension of nonimmigrant petition validity involving the same petitioner and beneficiary, and the same underlying facts, a prior approval for the classification sought should be given deference, absent material error, changed circumstances or new material information which adversely impacts eligibility. Counsel further references a March 9, 1994 CIS memorandum on the interpretation of specialized knowledge, and asserts that the beneficiary meets the requirements outlined in the memo in that he possesses knowledge which is different from that generally found in the industry, based on his special knowledge of the petitioning company’s products and application in international markets as well as an advanced level of knowledge of the processes and procedures of the petitioning company. Specifically, counsel states that the beneficiary’s “noteworthy and distinctive understanding of the petitioner’s products and the processes involved in the importation of these products into the United States obviously surpasses the usual level of knowledge held within the industry” and is therefore “truly special and advanced.” Counsel also notes the beneficiary’s twelve years of experience with an unrelated Pakistani dental instrument manufacturer and states that he gained “unique insight into the complex issues involved in the manufacturing of these products” and that he gained extensive experience in export requirements of many countries while employed with the unrelated company. Finally, counsel cites the beneficiary’s acquisition of three U.S. clients as evidence that he has enhanced the foreign employer’s productivity and competitiveness in the market place. Counsel concludes that the beneficiary possesses knowledge that normally can be gained only through prior experience with a foreign employer, that knowledge of the petitioner’s products and processes cannot be easily transferred to another individual, and that the functions he carries out are “absolutely vital to the success of the Petitioner’s company’s operations.”

On appeal, counsel concludes that “while the beneficiary’s specialized knowledge of surgical and dental instruments and the application of these instruments in international markets as well as his advanced level of knowledge of the processes and procedures of the company’s overseas suppliers may not be entirely exclusive it certainly qualifies as different and uncommon.”

On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge, or that he would be employed in the United States organization in a specialized knowledge capacity. 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.* In this case, the petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary’s position that would differentiate that employment from the position of general manager of a small operation within the petitioner’s industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary’s duties involve specialized knowledge, otherwise, meeting the definitions 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). The petitioner and counsel have adopted the language of the definitions and interpretations of specialized knowledge, liberally using the terms “special,” “advanced,” “uncommon,” “noteworthy,” and “proprietary” throughout their letters. However, conclusory assertions regarding the beneficiary’s employment are not sufficient. Merely repeating the language of the statute does not satisfy the petitioner’s burden of proof. *Id.* at 1108; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Although the petitioner has provided a general position description and the tasks that its general manager position entails, the petitioner has not even attempted to document the beneficiary’s claimed specialized knowledge. Both counsel and the petitioner repeatedly assert throughout the record that the beneficiary has specialized knowledge of U.S. FDA regulations pertaining to the import of surgical instruments from Pakistan, and that this knowledge is an absolute requirement for the position. However, a review of the job description for the beneficiary’s last position with the claimed foreign parent company reveals that he was primarily involved in marketing and sales of the petitioner’s product to clients in “Singapore, Malaysia, Dubai, Muscat, Saudi Arabia, England, the Philippines, Kuwait and Thailand.” The petitioner also notes his extensive prior experience with another Pakistani company in the same industry, where he served as an “Import Director” responsible for exports to “Singapore, Philippines, Indonesia, Thailand, Dubai, Saudi Arabia and the United Kingdom.” There is no evidence in the record to suggest that the beneficiary had any prior experience with the U.S. market or any familiarity with U.S. FDA import regulations pertaining to surgical instruments prior to being transferred to the U.S. approximately eight months before the instant petition was filed. This evidence is particularly relevant as counsel and the petitioner base their claims of the beneficiary’s knowledge to a large degree on his expertise with FDA regulations pertaining to the import of Pakistani surgical instruments to the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of

the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition, contrary to the assertions of counsel and the petitioner, there is no evidence on record to suggest that the FDA regulations pertaining to imports of surgical instruments from Pakistan are different from those applied to imports of identical products from any other country. In fact, the overview of the FDA's Good Manufacturing Practice requirements provided by the petitioner states that the relevant regulation "requires that domestic or foreign manufacturers have a quality system for the design, manufacture, packaging, labeling, storage, installation and servicing of finished medical devices for commercial distribution in the United States." The same standards appear to apply to any manufacturer, regardless of location, whose products will be used in the United States. The evidence does simply not support counsel's repeated statement that "not all imports of surgical and dental instruments are required to pass FDA approval." In addition, the petitioner has not explained how the knowledge of FDA standards amounts to specialized knowledge, particularly since the regulations are a matter of public record. While individual manufacturers would develop their own internal quality processes according to FDA guidelines, it seems unlikely that there would be substantial differences such that knowledge of a particular company's quality standards would be "specialized knowledge."

The AAO acknowledges the evidence presented that the FDA places special inspection procedures on certain Pakistani manufacturers who have previously been shown to be in violation of the universal GMP requirements. However, the evidence submitted reveals that the underlying quality control requirements remain the same for all importers, and that not all Pakistani manufacturers are affected by the "detention without physical examination" guidance provided in the FDA "Import Alert" submitted by counsel. Furthermore, the requirements applied to Pakistani manufacturers who are subject to the detention procedures merely require submission of documentation that the exporting firm is operating in accordance with GMP regulations, as well as visual inspections and laboratory analyses. Accordingly, it appears that the responsibility for meeting the "special procedures" referenced by the petitioner would be left to the foreign company, and would be satisfied by continually updating their Good Manufacturing Practice procedures, and providing documentation of same to the FDA, via the beneficiary, until it qualifies for an exemption.

Counsel states on appeal that failure to meet FDA standards will result in destruction of an entire shipment or, alternatively, payment of a \$10,000 fine and a prison term. The petitioner further claims that the beneficiary is responsible for ensuring that all shipments from the foreign company meet FDA requirements; however, this assertion is not credible. The foreign company is certainly aware of the FDA requirements and its manufacturing and quality control personnel would reasonably be the individuals responsible for producing the documentation and technical data needed to meet the requirements. While the beneficiary's job description includes interacting with the FDA, and responding to customer's technical questions, there is no documentary evidence, such as correspondence, reports, etc., to establish the true nature of his communications with government authorities or customers, or the level of knowledge of the company's products and processes actually required to perform his role as general manager. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffice*, 22 I&N Dec. at 165. Based on the above discussion, the AAO cannot conclude that the knowledge of the FDA regulations pertaining to imports of surgical instruments from

Pakistan constitutes specialized knowledge or that the beneficiary even possessed any knowledge of U.S. import regulations prior to commencing L-1B employment with the petitioner.

The AAO also acknowledges receipt of the advisory opinion letter of [REDACTED], an attorney who has expertise in customs and international trade law, regulatory compliance and trademarks. In her letter, Ms. [REDACTED] discusses the above-mentioned FDA Import Alert mandating detention of surgical instruments from Pakistan, and related customs issues, which she claims further complicate the import of such goods from Pakistan. She concludes "the complexity of regulatory issues faced by companies importing surgical instruments necessitates the employment of personnel with experience in the intricacies of US government regulatory requirements as well as expertise in manufacturing processes." While the opinions expressed by [REDACTED] are certainly respected, they are not persuasive in this matter, as they do not address the context of the beneficiary's job duties in light of the applicable regulations governing this visa petition. Further, as already discussed, there is no evidence that the beneficiary actually possessed any experience with U.S. government regulatory requirements prior to his transfer to the U.S. Relying on [REDACTED] analysis, the beneficiary would not be qualified to serve in the position offered.

In addition to the beneficiary's knowledge of U.S. FDA regulations, counsel and the petitioner repeatedly reference the beneficiary's "specialized knowledge of the petitioner's product," "knowledge of the composition, design and use of surgical and dental instruments" and "expert understanding of the processes involved in the manufacturing and sales of surgical instruments." However, there is no evidence on record that the beneficiary actually possesses the claimed advanced knowledge of the petitioner's products or manufacturing processes. Prior to his transfer to the U.S., the beneficiary was employed by the foreign entity as a sales and marketing partner responsible for determining market demand, pricing strategies, identifying customers, monitoring market trends, and meeting with customers. The petitioner has not claimed that the beneficiary has previous experience in manufacturing, research and development, or quality control, which might have reasonably given him an advanced knowledge of the manufacturing processes. It is not clear how the beneficiary, in performing routine sales and marketing functions, would acquire or need an advanced knowledge of the company's manufacturing processes which would distinguish him from any other sales employees within the foreign entity. While the AAO does not doubt that the beneficiary is familiar with the company's product catalogs and capable of answering questions about the products, there is no evidence on record to suggest that his knowledge is uncommon within the petitioner's organization or within the industry. Nor is there any indication that the petitioner's products are particularly unique or different from similar products in the industry. In fact, counsel states on appeal that the beneficiary gained much of his knowledge of manufacturing processes with an unrelated company in the same industry, and that it was with the other company that he gained his knowledge of "hundreds of different kinds of surgical and dental instruments." In making this statement, counsel has acknowledged that prior employment with the petitioner's foreign entity is not a prerequisite for performing the duties of the U.S. position offered, which strongly suggests that the U.S. position does not meet the statutory definition of a specialized knowledge position.

Citing *Matter of LeBlanc* and *Matter of Raulin*, counsel notes on appeal that it is appropriate for CIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business' 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)). As stated by the Commissioner in *Matter of Penner*, 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 classification sought.” 18 I&N Dec. at 52. 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.

Citing *Matter of Penner*, 18 I&N Dec. 49 (Reg. Comm. 1982), counsel further argues that “the test for specialized knowledge is whether a person is to be employed primarily for his or her ability to carry out a key process or function which is important or essential to the business firm’s operation.” Counsel asserts that the position offered to the beneficiary requires him to perform duties that are necessary in order for the petitioner’s organization to remain competitive, and requires him to have a specialized knowledge of the importation requirements and manufacturing procedures of surgical and dental instruments from Pakistan. The AAO does not doubt that the beneficiary, as the sole employee of the U.S. company, carries out all of the functions essential to the petitioner’s operation nor that the duties he performs are necessary in order for the company to remain competitive. However, these elements alone do not establish the beneficiary’s eligibility for the classification sought. Essential as the position of general manager may be, the petitioner has not established that this position requires specialized knowledge, or that the beneficiary has in fact acquired such knowledge.

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.

A 1994 Immigration and Naturalization Service (now CIS) memorandum written by the Acting Associate Commissioner also allows CIS to compare the beneficiary’s knowledge to the general United States labor

market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

The beneficiary's job description does not distinguish the beneficiary's knowledge as more advanced or distinct among other managers or sales and marketing personnel employed by the foreign or U.S. entities or by other unrelated companies in the petitioner's industry. To differentiate the beneficiary, the petitioner places great emphasis on his specialized knowledge of FDA quality control regulations as they apply to the import of surgical instruments from Pakistan, and his "advanced level of knowledge of the processes and procedures of the petitioner's operations." As already discussed, the petitioner has not documented that the beneficiary actually had any prior experience with FDA regulations, nor has it specified in any detail the processes and procedures of which the beneficiary is claimed to have "advanced knowledge." As the petitioner failed to document its assertions, these claims have little value.

Moreover, as previously noted, counsel and the petitioner have stated that the beneficiary's claimed knowledge of manufacturing processes in the industry was primarily gained with an unrelated employer, which suggests that there is nothing uncommon or special to distinguish the petitioner's products or processes from that of any other manufacturer of surgical and dental instruments. This assumption is further supported by the petitioner's statement that "it would take at least five years to train someone to be minimally competent in this specialized area of surgical/dental instruments manufacture and export to the U.S." The beneficiary himself was only employed by the petitioner's foreign parent company for three years prior to his transfer to the U.S. and thus, using the petitioner's standards, was only qualified for the position based on his general experience in the industry. Furthermore, the petitioner has provided no documentary evidence regarding its "specialized" manufacturing procedures, nor is there any evidence that the beneficiary, who is and has been engaged primarily in sales and marketing since joining the company, possesses an advanced knowledge of such procedures.

Thus, as the petitioner has not established the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, nor has it established that the position of general manager within its organization requires specialized knowledge, the director rationally determined that the beneficiary does not qualify as a specialized knowledge worker. While the AAO recognizes that the beneficiary carries out key functions within the petitioner's organization, and recognizes the petitioner's preference to secure the services of an employee who has worked for its parent

company, these elements are insufficient to establish eligibility for classification as a specialized knowledge worker. There is nothing in the record to suggest that any other experienced employee within the parent company's organization, or any employee with a record of success a similar role within the petitioner's industry, could not adequately perform the proposed duties.

It is noted that the current petition is for an extension of an L-1B petition that was previously approved by the director. Counsel references a CIS memorandum in which the service centers are advised that adjudicators processing extensions of a nonimmigrant petition involving the same beneficiary and petition and the same underlying facts should give deference to a prior approval for the classification sought. See Memorandum of [REDACTED], Associate Director for Operations, U.S. Citizenship & Immigration Services, *The Significance of a prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3 (April 23, 2004.) However, the memorandum specifically states prior approval of a petition need not be given deference where it is determined that there was a material error with regard to the previous petition approval, with material error involving the misapplication of an objective statute or regulatory requirement to the facts at hand. *Id.*

If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute a material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between the court of appeals and the district court. Even if a service center director had approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Beyond the findings in the director's decision, another issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner claims that it is the wholly-owned subsidiary of the beneficiary's foreign employer, which is owned equally by five shareholders. The petitioner has submitted a single stock certificate indicating that all 200 of its shares were issued to the claimed parent company in January 2001. However, the petitioner has also submitted its 2001 IRS Form 1120, U.S. Corporation Income Tax Return, on which it indicated on Schedule E that the beneficiary owns 100% of the company's stock. On Schedule K of Form 1120, the petitioner indicated that no individual or corporation owned 50% or more of its stock. Based on the limited information provided, it is not possible to conclude that the petitioner had a qualifying relationship with the foreign entity at the time the petition was filed. 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). For this additional reason, the petition cannot 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).

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

ORDER: The appeal is dismissed.