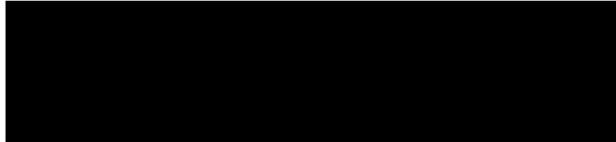


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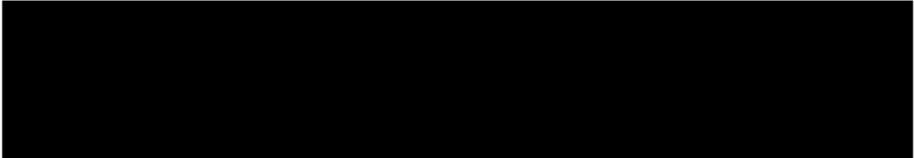
File: SRC 06 055 51928 Office: TEXAS SERVICE CENTER Date: JUN 05 2007

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, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of nuclear technician 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, a limited liability company formed under the laws of the State of Texas, is allegedly in the business of servicing, inspecting, and maintaining nuclear power plants.¹ The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or will be employed in a capacity which involves specialized knowledge or that he has specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of aspects of nuclear power plant maintenance.

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) further states that an individual petition filed on Form I-129 shall be accompanied by:

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

¹It should be noted that, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. As the State of Texas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. Therefore, this calls into question the continued eligibility of the petitioner for the benefit sought.

- (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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a capacity which involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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.

In a letter dated December 7, 2005, the petitioner is described as a "joint venture" between an American corporation and a Slovenian company. The letter states that the petitioner was formed "to address the increasing demand for nuclear technicians who are qualified and possess the necessary knowledge and experience to service, inspect, and maintain nuclear power plants" and that the petitioner plans to transfer "certain highly skilled technicians to work on nuclear outages as the American market may require." The beneficiary's proposed job duties as one of these transferees and his purported specialized knowledge were described in the letter dated December 7, 2005 as follows:

[The petitioner] plans to transfer [the beneficiary] as a nuclear technician directly from [the foreign employer] to provide reactor vessel services, maintenance, and refueling services to nuclear power plants owned by GE and Westinghouse, and other U.S. nuclear power companies. Specifically, [the beneficiary] will be transferred to perform the following services for American nuclear power plants:

- Opening and closing of nuclear reactor vessels;
- Cleaning of the reactor vessel flange and studs;
- Refueling services;
- Welding work on dry-cask storage containers for spent fuel;
- Maintenance of primary valves in nuclear plants;
- Maintenance of snubbers; and
- Maintenance of other specific nuclear components.

The beneficiary's acquisition of his purported specialized knowledge was described in the letter dated December 7, 2005 as follow:

[The beneficiary] is a trilingual mechanical and maintenance specialist with nineteen years of experience in the nuclear power services industry. [The beneficiary] has been employed with [the foreign employer] since September 9, 1997. By virtue of his years of experience in the nuclear power service industry, [the beneficiary] has an advanced knowledge of [the petitioner's] services to the nuclear generation power industry. For example, [the beneficiary] is qualified to replace reactor vessels, conduct maintenance, and perform refueling operations at any nuclear power plant. [The beneficiary] also attended vocational technical school where he studied to become a machinery technician.

Prior to joining the [foreign employer], [the beneficiary] worked as a maintenance mechanic for [other employers] as a maintenance mechanic for twelve years. The combination of his mechanical and maintenance skills makes [the beneficiary] a valuable asset of [the foreign employer] and eligible for L-1B transfer. [The beneficiary] has been servicing the European nuclear power industry throughout his career and performing yearly nuclear outage work at various facilities. At these plants, [the beneficiary] continuously worked on hangers and snubbers, conducted snubber testing, reactor vessel opening and closure, and several different mechanical maintenance activities.

Apart from work experience and education, nuclear technicians such as [the beneficiary] must consistently obtain and extend all necessary certifications. [The beneficiary] has obtained the following certifications:

- School Certificate of Concluded General Examination – Mechanical Technician;
- Certificate – Radiation Protection II;
- Certificate – Radiation Protection III;
- Confirmation-Attest No. [REDACTED] GTAW (manual) (1997);
- Confirmation-Attest No. [REDACTED] GTAW (manual) (1997);
- Certificate-Crane Driver;
- Confirmation-Pre-outage qualification of work leaders and work coordinators at Nuclear Power Plant Krsko (2002);
- Certificate-Qualification for Gantry Operator;
- Certificate-Qualification for Welder;
- Certificate-Visual Testing II;
- Certificate-Medical Clearance for Maintenance Worker; and
- Certificate of Qualification-EN473 from QTechna.

On December 21, 2005, the director requested additional evidence. The director requested, *inter alia*, further documentation regarding the beneficiary's training and acquisition of the purported specialized knowledge; a description of the training regimen required for a nuclear technician to become competent in the petitioner's methodologies, techniques, tools, and applications; a description of the number of similarly experienced people employed by the organization; and further documentary evidence that the beneficiary has been

employed in a specialized knowledge capacity.

In response, the petitioner submitted a letter dated December 28, 2005 from the foreign entity indicating that it currently employs eight people, out of fifty employees, who have "gained similar experience and training to [the beneficiary]." The foreign entity also explained that it would take "at least five years of focused experience at nuclear power plants and specific training and certifications to be able to perform such a position."

On January 28, 2006, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or will be employed in a capacity which involves specialized knowledge or that the beneficiary has specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of aspects of nuclear power plant maintenance. In support, counsel submits a letter of support dated March 22, 2006 from a Slovenian nuclear facility giving further details regarding the beneficiary's purported specialized knowledge and copies of current internet job postings for nuclear technician positions. Based on the March 22, 2006 letter, counsel narrowed the beneficiary's specialized knowledge as follows:

Use of state-of-art [sic] technologies and techniques for the purpose of conducting in-place and bench snubber testing; nuclear maintenance of mechanical and hydraulic snubbers which are very delicate pieces of equipment and are important for [nuclear power plant] operation; and the area of reactor services, which includes the delicate removal and storage of the Reactor Vessel Head and removal and storage of the Pressurizer and Reactor Vessel Missile Shields, among other services. More importantly, [the author of the March 22, 2006 letter] certify that [the beneficiary's] advanced knowledge and expertise of these mentioned nuclear maintenance services are not commonly held throughout the field of nuclear maintenance.

Upon review, counsel's assertions are not persuasive in demonstrating that the beneficiary has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) or that he has specialized knowledge.

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 job description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as a nuclear technician, the petitioner fails to establish that this position requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

As a threshold issue, it must be noted that counsel's submission on appeal of the letter dated March 22, 2006 in an attempt to redefine the beneficiary's purported specialized knowledge was inappropriate. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Moreover, the director specifically addressed in her Request for Evidence the petitioner's need to

establish that the beneficiary has been and will be employed in a specialized knowledge capacity. The petitioner was put on notice of the need of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner now submits further evidence regarding the beneficiary's purported specialized knowledge on appeal. However, the AAO will not consider this evidence for the purpose of ascertaining the scope of the beneficiary's purported specialized knowledge. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States and his position abroad both require "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other nuclear technicians employed by the petitioner's organization or in the industry at large. Going on record without 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)). 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).

Counsel to the petitioner asserts that the beneficiary possesses specialized knowledge of the provision of services to the nuclear generation power industry such as the replacement of reactor vessels, the conduct of maintenance, and the performance of refueling operations. The petitioner also asserts that the beneficiary acquired this purported specialized knowledge through years of experience and training and that it would take at least five years of training and experience for another employee to be prepared to do the beneficiary's job. However, the petitioner asserts that eight other employees, out of a total of fifty employees employed abroad, have the same level of experience and expertise as the beneficiary. Finally, on appeal, counsel to the beneficiary attempts to narrow the beneficiary's purported specialized knowledge (*see supra*) and asserts that these skills are not commonly held in the industry.

The petitioner, however, has not established that the beneficiary's knowledge is indeed specialized, because the petitioner never distinguishes the beneficiary's knowledge from that of other similarly experienced and trained nuclear technicians employed by the petitioner's organization or in the industry at large. The record does not reveal the material difference between the maintenance services provided by the petitioner, using the beneficiary's knowledge, and the services provided by nuclear maintenance technicians generally throughout the industry. The record is devoid of any evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and that it is not generally known by other similarly trained and experienced nuclear technicians who work on maintenance projects during outages. In fact, it appears that at least 16% of the petitioning organization's entire workforce is similarly trained and experienced. Moreover, while the beneficiary appears to have received training, these training programs appear to concern general subjects, and the record is devoid of any evidence that this training imparted knowledge which is uncommon, noteworthy, or distinguished by some unusual quality or which concerns processes, procedures, or methodologies which are not generally known by all nuclear technicians who work on maintenance projects during outages.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced nuclear technician who has been, and would be, a valuable asset to the petitioner. However, it is 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)). 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 classifications sought." 18 I&N Dec. 49, 52 (Comm. 1982). 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 firm's operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive 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). The decision noted that the 1970 House Report, H.R. REP. 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 subcommittee 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. at 119. 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. v. Attorney General*, 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.”)

A 1994 Immigration and Naturalization Service (now CIS) memorandum written by the then Acting Associate Commissioner also directs 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 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.

In the instant matter, while the petitioner has presented evidence on appeal that there is a demand for experienced nuclear technicians, it has not presented any evidence that people working in the United States labor market who are engaged in providing nuclear power plant maintenance services do not possess the same knowledge possessed by the beneficiary. Certainly, there are a finite number of skilled workers in this field, and enticing one to leave his or her existing employer would be a challenge for a recruiter in most any field. However, even though their numbers may be small when compared to other occupations and difficult to recruit, this does not establish that the knowledge is “specialized” as defined by the Act and the regulations. Absent any evidence that the knowledge held by the beneficiary is not commonly held throughout the industry, the petitioner has not established that the beneficiary possesses specialized knowledge or that the job requires an employee who has specialized knowledge.

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the

knowledge possessed by other nuclear technicians. As the petitioner has failed to document any materially unique qualities to the petitioner's processes and procedures, the petitioner's claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a "key" employee. There is no indication that the beneficiary has knowledge that exceeds that of any nuclear technicians who performance maintenance services during outages, or that he has received special training in the company's methodologies or processes which would separate him from any other nuclear technician employed with the petitioner, in the industry at large, or with the foreign entity.

The legislative history of 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 has not been employed abroad, and would not be employed in the United States, in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner did not establish that it has a qualifying relationship with the foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a 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.

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a legal entity, including a limited liability company, which a parent "owns, directly or indirectly, half of the entity and controls the entity."

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner, a Texas limited liability company, asserts that it is 50% owned by an American corporation, 25% owned by the foreign employer, and 25% owned by a foreign entity which is 100% owned by the foreign employer. Therefore, the foreign employer, either directly or indirectly, allegedly owns and controls half of the United States operation thus establishing, if true, that the petitioner is a subsidiary of the foreign employer.

After the director requested additional evidence regarding the petitioner's qualifying relationship with the foreign employer, counsel summarized the petitioner's ownership structure and supporting evidence in a letter dated January 9, 2006. Counsel asserts that the submitted evidence establishes the identity of the members of the limited liability company. According to counsel, this evidence includes the petitioner's articles of organization; minutes from a meeting between representatives of the purported United States member and the foreign employer on April 20, 2004, over one year before the organization of the petitioner; IRS Form SS-4; and confirmation of the petitioner's proper organization and good standing issued by the State of Texas.

Upon review, the evidence submitted by the petitioner fails to establish that it has a qualifying relationship with the foreign employer because the petitioner has failed to establish the identity of the members of the petitioner, a Texas limited liability company. While the organizational documents submitted by the petitioner clearly identify the initial managers of the limited liability company, these documents do not identify the members. Moreover, while the record may establish that the managers are associated with the various purported members, this does not establish that the employers of these managers are members of the petitioner. Finally, the minutes from a meeting between two of the purported members over one year prior to the organization of the petitioner do not establish the identity of the members of the limited liability company as of the date of the filing of the instant petition.

Therefore, as the petitioner did not establish that it has a qualifying relationship with the foreign entity, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner did not establish that it has secured sufficient physical premises to house the "new office." While both the director and the petitioner failed to consider the petitioner to be a "new office," a review of the record reveals that the beneficiary is indeed planning to come to the United States in a specialized knowledge capacity to be employed in a "new office" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(F) because the organization has been doing business in the United States for less than one year. The record indicates that the petitioner was organized on June 8, 2005. The instant petition was filed on December 9, 2005. Therefore, the additional requirement set forth in 8 C.F.R. § 214.2(l)(3)(vi)(A) applies. This regulation requires the petitioner to establish that sufficient physical premises have been secured to house the new office. As the record is devoid of any such evidence, the petition may not be approved for this additional reason.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the

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petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.