

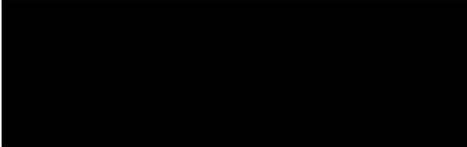


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File: LIN 05 117 51941 Office: NEBRASKA SERVICE CENTER Date: MAY 17 2007

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 BENEFICIARY:



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

The petitioner filed this nonimmigrant petition seeking to extend the employment of the beneficiary in the position of senior software engineer as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is an international news and financial services organization and claims a qualifying relationship with [REDACTED] of Australia. The petitioner seeks to employ the beneficiary for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Counsel also asserts that the director erred in denying the petition for allegedly failing to follow an April 23, 2004 Citizenship and Immigration Services (CIS) Interoffice Memorandum. *See* Memo. from William R. Yates, Associate Director for Operations, to Service Center Directors, *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* (April 23, 2004) ("Yates Memorandum"). This memorandum provided guidance on the process by which an adjudicator, during the adjudication of a subsequent request for petition extension, may question another adjudicator's prior approval of a nonimmigrant petition where there has been no material change in the underlying facts. Specifically, counsel argues that, since the United States Consulate General in Sydney, Australia issued the beneficiary an L-1 visa in 2002 pursuant to an approved blanket petition, CIS is now obligated to defer to that prior visa issuance based on the Yates Memorandum.

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.
- (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 will be employed in a capacity which involves specialized knowledge or that the beneficiary possesses such 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 February 15, 2005 appended to the initial petition, the petitioner described the beneficiary's job duties as "senior software engineer" in the United States as follows:

- Design, code and test software components for [REDACTED] historical data servers on UNIX and Microsoft platforms;
- Compose and enhance administrative and installation utilities for the historical [sic] data servers;
- Remain abreast of relevant technology;
- Produce required technical documentation;
- Design and optimize databases and database applications on various platforms; and
- Apply knowledge of financial industry technology standards to software requirements.

The petitioner further described the beneficiary's job duties abroad as follows:

- Design, code and test software components for [REDACTED] historical data servers on UNIX and Microsoft platforms;

- Compose/enhance administrative and installation utilized for the historical data servers;
- Develop functionality for the Data Backup Unit and Intra-day Tick Server;
- Design and develop the Times Series Agent using C++;
- Produce required technical documentation;
- Transfer databases and database applications from one platform to another; and
- Apply knowledge of financial industry technology standards to software requirements.

On April 5, 2005, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized.

In response, the petitioner provided a letter dated June 27, 2005. In that letter, counsel provided an expanded description of the beneficiary's job duties in the United States as follows:

- Design, code and test software components for [REDACTED] Web Decision [sic] support System, historical data and news servers on UNIX, AIX and Microsoft platforms; Work involves advance C++ programming[,] i.e. socket programming, OCI (Oracle Call Interface) to Access Oracle Databases, use of various C++ Design Patterns, dealing with XML based Data, expert knowledge of the HTTP protocol. Develop and maintain Oracle data Loader Utilities. [C]reate, maintain PL/SQL stored procedures for advance SQL queries to retrieve data from the oracle database, and maintain backend Java applications to provide financial data to clients.  
Also develop and maintain web based News server, which uses the Autonomy Search Engine to retrieve news headlines and stories from several news sources via large Quotron News databases.  
Develop and maintain entitlement modules to handle Entitlements for [REDACTED] Clients using the MEP API (Master Entitlement Process Application Program Interface).
- Compose and enhance administrative and installation utilities for the historical data servers; Developing and maintaining Installation and administrative scripts using Unix shell scripting and SQL scripts.
- Remain abreast of relevant technology; New advance features for C++, new additions to C++ STL (Standard Template Library), Expat C++/XML library, Acquire knowledge of Oracle 10g, Data Security using MD5, Base64 data encryption decryption.
- Produce required technical documentation; Model and document all developed code using UML (Unified Modeling Language).
- Design and optimize databases and database applications on various platforms; i.e. Create Maintain and Optimize Oracle database for fast Data storage and date retrieval. Analyzing, performance tuning Databases and SQL queries etc. and
- Apply knowledge of financial industry technology standards to software requirements. Apply Market rules to the data retrieved where necessary. Good Knowledge of Financial Markets and Financial instruments.

The petitioner provided a list of specific projects assigned to the beneficiary purportedly illustrating the specialized nature of these duties.

After providing a job description for the petitioner's similarly employed "senior software engineers" in the June 27, 2005 letter, the petitioner attempts to distinguish the beneficiary's knowledge from that possessed by his fellow "senior software engineers" as follows:

Please further note that the beneficiary is an ideal candidate for this position due to his knowledge of time series data formats and its relation to the [REDACTED] data network (IDN). [The beneficiary] acquired this knowledge during his two and half years employed with [the foreign entity] in Australia. [The foreign entity] is a wholly owned subsidiary of the Reuters group of companies. It would not be practical for [REDACTED] to train other similarly employed Senior Software Engineers for this role since the nature of the knowledge is so specialized and it would therefore take an inordinate amount of time to impart the necessary skill sets to a new hire in the United States. [The beneficiary's] employment with [the foreign entity] provided him with the necessary skill sets for this position. His continued employment with [the petitioner] in St. Louis is critical to our ability to provide the technical support to our clients and internal users.

On August 17, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge capacity or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Counsel also asserts that the director erred in denying the petition for allegedly failing to follow the 1994 Yates Memorandum. Specifically, counsel argues that, since the United States Consulate General in Sydney, Australia, issued the beneficiary an L-1 visa in 2002 pursuant to an approved blanket petition, CIS is now obligated to defer to that prior visa issuance based on the Yates Memorandum.

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

As a threshold issue, counsel's reliance on the Yates Memorandum is misplaced. First, the guidance provided in the Yates Memorandum does not apply to prior decisions of non-CIS employees, such as consular officers employed by the Department of State who adjudicate blanket-based L-1 visa applications pursuant to 8 C.F.R. § 214.2(l)(5)(ii). The title of the memorandum specifically limits its scope to the significance of prior CIS approvals of nonimmigrant visa petitions. Therefore, the issuance of an L-1 visa in 2002 by the Consulate General in Sydney, Australia, to the beneficiary pursuant to an approved blanket petition need not be afforded any weight in this proceeding.

Second, even if the 2002 visa issuance by the Consulate General was applicable, the Yates Memorandum does not create any substantive rights in the petitioner, and a failure to follow the guidance in the Memorandum by CIS would not be grounds for a withdrawal of the decision. The Yates Memorandum specifically states that adjudicators are not bound to approve subsequent petitions where ineligibility has not

been demonstrated because of erroneous prior approvals, and limits its authority on Page 4 of the memorandum as follows:

This memorandum is intended solely for guiding USCIS personnel in performance of their professional duties. It is not intended to be, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or matter.

Courts have consistently supported this position. *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (holding that CIS memoranda merely articulate internal guidelines for INS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely"); *see also Noel v. Chapman*, 508 F.2d 1023 (2nd Cir. 1975) (finding that policy memoranda to INS district directors regarding voluntary extended departure determinations to be "general statements of policy"); *Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004) (describing an INS Operating Policies and Procedures Memorandum (OPPM) as an "internal agency memorandum," "doubtful" of conferring substantive legal benefits upon aliens or binding the INS); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985) (describing an INS Operations Instruction (OI) as an "internal directive not having the force and effect of law"); *Ponce-Gonzalez v. INS*, 775 F.2d 1342, 1346-47 (5th Cir. 1985) (finding that OIs are "only internal guidelines" for INS personnel, and that an apparent INS violation of an OI requiring investigation of an alien's eligibility for statutory relief from deportation was at worst "inaction not misconduct").

Regardless, even if the director had committed a procedural error by failing to follow the guidance in the Yates Memorandum, it is not clear what remedy would be appropriate beyond the appeal process itself. As the AAO reviews appeals on a *de novo* basis, a remand of this matter to the service center would serve no useful purpose. *See generally Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 senior software engineer, the petitioner fails to establish that this position requires an employee with specialized knowledge or, even if it does, that the beneficiary has such knowledge or had been employed in a specialized knowledge abroad.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "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 software employees employed by the petitioner or in the industry at large.

In contrasting the beneficiary's knowledge to that of other similarly employed "senior software engineers," counsel asserts that the beneficiary possesses specialized knowledge of "time series data formats and its

relation to the Reuters data network (IDN)." In support of this assertion, counsel purports that it would not be practical to train other similarly employed senior software engineers for this role since the nature of the knowledge is too specialized. Counsel further asserts that it would take an inordinate amount of time to impart the necessary skill sets to a new hire in the United States and that the beneficiary gained this knowledge through his employment with the foreign entity. However, counsel failed to provide any evidence regarding the beneficiary's training or experience in this field, the amount of training or experience necessary to impart this knowledge to similarly employed engineers, or to provide a specific explanation, supported by evidence, as to how this purported specialized knowledge can be *materially distinguished* from knowledge generally known in the industry or by the employer's other software engineers. There is no evidence in the record establishing that the beneficiary's knowledge is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by other software engineers. 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).

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced software engineer 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. 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 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, 91<sup>st</sup> 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 Citizenship and Immigration Services (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.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other software engineers employed by the petitioner or by software engineers employed elsewhere. As the petitioner has failed to document any knowledge which is noteworthy, uncommon, or distinguishable from knowledge generally known in the industry by similarly trained and experience software engineers, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other software engineer or that he has received special training in the company's methodologies or processes which would separate him from any other software professional employed with the petitioner or elsewhere.

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 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 has not established that the beneficiary was employed in a specialized knowledge capacity abroad for the requisite six-month period for two reasons. *See 8 C.F.R. § 214.2(l)(3)(iv).*<sup>1</sup> First, for the same reasons articulated above, the petitioner has not established that the beneficiary was employed in a specialized knowledge capacity or that he possessed specialized knowledge. As explained previously, the petitioner has failed to establish that the beneficiary's knowledge constitutes a specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other software engineers employed by the foreign entity or in the industry at large.

Second, even if the knowledge described by the petitioner could be classified as "specialized," the record does not establish that the beneficiary was employed in a specialized knowledge capacity for the requisite six-month period. *See 8 C.F.R. § 214.2(l)(3)(iv).* The record indicates that the beneficiary was employed with the foreign entity from January 2000 until August 2002. The record further indicates that the beneficiary

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<sup>1</sup>As the beneficiary applied for an L-1 visa at the United States Consulate General in Sydney, Australia, pursuant to an approved blanket petition between January 16, 2002 and June 6, 2005, he only needed to establish six months of employment with the foreign entity in a specialized knowledge position.

received training certificates related to his profession in both June 2001 and in August 2002. Finally, as the petitioner asserts in the letter dated June 27, 2005 that the beneficiary's "employment with [the foreign entity] provided him with the necessary skill sets for this position," it is clear that the petitioner is not alleging that the beneficiary already possessed his purported specialized knowledge when he commenced employment with the foreign entity in January 2000.

Therefore, in view of the above, while it appears as if the beneficiary acquired his purported specialized knowledge at some point during his 32 months of employment with the foreign entity, the petitioner offers no evidence establishing when, exactly, the beneficiary acquired this knowledge. Consequently, the petitioner has not established that beneficiary acquired the purported specialized knowledge prior to December 26, 2001, six months before he applied for the L-1 visa, or even February 2002, approximately six months before he ceased working for the foreign entity. Given that the record establishes that the beneficiary was still receiving training as late as his last month of employment with the foreign entity, it is imperative that the petitioner establish when, exactly, the beneficiary acquired his specialized knowledge and commenced working for the foreign entity in a specialized knowledge capacity. For this additional reason, the petition may not be approved.

Beyond the decision of the director, a related matter is whether the petitioner has established that it has a qualifying relationship with the foreign employer, [REDACTED]

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, more than 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 provided no evidence of a qualifying relationship. The ownership and control of the foreign entity has not been established in the record. Specifically, the blanket petition submitted by the

petitioner contains no attachment detailing which companies are a part of this approved petition. In addition, the parent company's 2003 annual report submitted for the record does not list the foreign entity as one of its subsidiary undertakings, joint ventures, or associates. Therefore, 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 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.