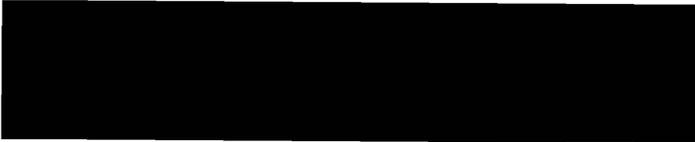


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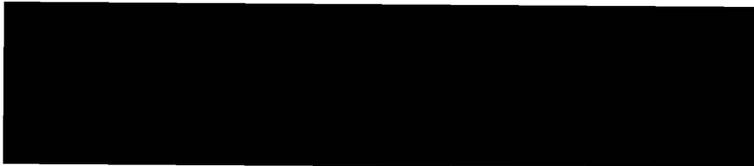
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IN RE: Petitioner:
Beneficiary:



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, Chief
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 visa petition seeking to employ the beneficiary as a stables manager/trainer as an L-1B nonimmigrant intracompany transferee having specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized under the laws of the State of Oregon and is allegedly in the business of boarding, training, and selling horses.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a position involving specialized knowledge; or (2) that the beneficiary has been employed abroad in a position involving 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 asserts that the beneficiary has specialized knowledge of (1) the training, development, and care of the Marwari breed of horse; and (2) the training of horses to perform in Hindu and Sikh wedding ceremonies and other traditional festivals and events.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary has specialized knowledge as defined in the Act and the regulations. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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.

The petitioner described the beneficiary’s duties abroad, and proposed duties in the United States, in a letter dated August 3, 2006 as follows:

[The beneficiary] currently oversees operations of [the foreign employer] in India. He is responsible for the care, training and development of our horses, including foals, yearlings and pregnant mares. There responsibilities include setting and monitoring feeding schedules and maintaining the proper nutritional mix to maximize each horse’s overall development. [The beneficiary] closely supervises and trains our new employees to ensure proper handling and the safety of our horses. [The beneficiary] is also responsible for procuring and maintaining feed stocks, hay and other supplies.

While [the beneficiary] naturally answers to myself and my partner in India, [the beneficiary] is the key to our success. This is because [the beneficiary] has been around horses all of his life and he has a natural ability to work and relate to them. [The beneficiary] knows horses. He knows how to care for them, to train them and to prepare them to reach their maximum potential, whether it is for racing, riding, show or re-sale.

* * *

[The beneficiary] will be responsible for the feeding, care, development and training of all of our horses. He will also be responsible for the proper care and safety of our boarders’ horses. [The beneficiary] will develop the necessary schedules to exercise and rotate our horses from pasturing to boarding, and he will develop the appropriate nutritional mix and feeding schedule for each horse. Strong, healthy horses attract a top premium price and they encourage other boarders to use our facilities and thus increase our business. [The

beneficiary] will personally oversee the care of all pregnant mares and foals.

[The beneficiary] will also be responsible for supervising and training all employees who are in regular contact with the horses. [The beneficiary] will assist in the selection of new horses to purchase and in the showing of horses for sale. As we begin our plan to introduce new breeds from India into the local market, [the beneficiary] will be responsible for helping the horses get used to their new environment and de-stressing from their long journey.

The petitioner also noted that the beneficiary has been working for the foreign employer since March 2004 and that, before working for the foreign employer, the beneficiary worked for a different stable in India. The owner of that stable provided a letter dated March 3, 2006 in which the beneficiary is described as being "fully trained in Care of Bred or Pregnant Mares" and in "trail ridding [sic] and break horses."

Finally, the petitioner submitted documents outlining its business plan. These documents indicate that the petitioner plans to purchase Marwari foals in India, pasture them in India, and import them into the United States for sale at age three for racing purposes. The petitioner plans to market these horses for sale before importation and predicts that most of these horses will be sold "before they reach American soil." The petitioner describes its business generally as a "horse boarding, riding, and training facility."

It is important to note that the petitioner does not indicate that it will train Marwari horses in the United States for any purpose, including for use in Indian weddings or festivals. Furthermore, the petitioner does not indicate that the beneficiary will train Marwari horses in the United States for any purpose, or that he trained Marwari horses abroad, or that he trained any horses for participation in weddings or festivals. To the contrary, the petitioner states that it plans to import three-year old Marwari horses into the United States for immediate resale, that the beneficiary's only involvement with these horses will be "helping the horses get used to their new environment and de-stressing from their long journey," and that the beneficiary prepared horses abroad for "racing, riding, show or re-sale."

On August 18, 2006, the director requested additional evidence. The director requested, *inter alia*, a description of the manner in which the beneficiary acquired his purported specialized knowledge; evidence that the beneficiary has advanced knowledge, which is uncommon, noteworthy, or distinguished by some unusual quality, and not generally known by others in the beneficiary's field of endeavor, or that his knowledge distinguishes him from those with only elementary or basic knowledge; evidence that the beneficiary's job duties in the United States will require his claimed specialized knowledge; and evidence that the processes and procedures of which the beneficiary has knowledge is different from those used by other comparable entities within the petitioner's industry.

In response, the petitioner submitted a letter dated September 7, 2006 in which the petitioner further describes the beneficiary's claimed specialized knowledge and proposed duties as follows:

[The beneficiary] possesses a very special talent. His unique ability to communicate with horses far exceeds anyone else's talents that I have witnessed. [The beneficiary] has spent almost his entire life around horses, and relating to them comes naturally for him. In

addition, [the beneficiary's] knowledge and experience with certain exotic breeds that are well known and respected in India, but that are very rare here in the United States, is a tremendous strategic advantage for [the petitioning organization]. Part of the plan for [the petitioner] is to start importing, showing and selling certain exotic breeds, such as the Marwari, and it would be nearly impossible here in the United States to find a sufficiently qualified individual to work with this breed of horse. Similarly, as a Sikh, I am contacted by many Indians living in the United States and even Canada who are interested in hiring horses for our traditional festivals and wedding ceremonies. I am not aware of any stables in North America that currently provides this service and I would like to be the first. However, I would need [the beneficiary] to train the horses for these special performances.

* * *

Apart from the care, development and training of all of our and our boarders' horses, I have already identified two new market opportunities that [the beneficiary's] knowledge will enable me to capitalize on. The first is the importing of the Marwari breed to the United States. The Marwari is a famous, native Indian breed that will bring top prices here in the United States. I have already submitted my business plan for this breed to your office and I am including with this letter some additional information about these horses. I do not think that I could find anyone capable of training these horses in the United States, and I need [the beneficiary's] assistance to enable me to undertake this venture.

The second business opportunity that I have identified is the growing and currently untapped market in the United States for specially trained horses for Hindu and Sikh weddings ("Ghodi Sajana"), and other traditional festivals and events. [The beneficiary] was the innovator in this specialized field when he worked for Behbal Stud Farms, where he trained some of the first horses specifically for such occasions [sic]. At [the petitioner's business] in Portland, I have a 3200 square foot indoor arena suitable for use as a wedding hall, with a capacity for approximately 250 people. I also have outdoor facilities that will accommodate 300 guests. Because I am a Sikh, many of my customers are also from India and I have already been contacted by other members of the Indian community interested in renting our facilities for special occasions [sic], and they would like to hire trained horses for Indian weddings. However, these horses must be specially trained to perform with loud noise and small children all around them and to dance to traditional Hindu and Punjabi music. It would be dangerous to the horse and the guests if the horse were not properly trained. I do not know anyone here in the United States that has knowledge to train these horses. I need [the beneficiary's] special knowledge and expertise to allow me to serve this unique market. Without [the beneficiary], this part of my business will fail.

On September 22, 2006, the director denied the petition. The director concluded that "[t]he record does not establish that the beneficiary has been and will be employed in a specialized knowledge capacity."

On appeal, counsel to the petitioner asserts that the beneficiary has specialized knowledge of (1) the training,

development, and care of the Marwari breed of horse; and (2) the training of horses to perform in Hindu and Sikh wedding ceremonies and other traditional festivals and events.

Upon review, the petitioner'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).

As a threshold matter, the petitioner's attempt in its response to the director's Request for Evidence to expand and redefine both the beneficiary's purported specialized knowledge, and his foreign and proposed job duties, in an attempt to establish that he has been, and will be, employed in a specialized knowledge capacity was inappropriate. The purpose of the Request for Evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a Request for Evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

In this matter, the petitioner generally described the beneficiary's duties in the initial petition as training and caring for horses. The petitioner did not indicate that the beneficiary trained Marwari horses abroad or that he trained horses for Indian weddings or festivals. The petitioner also did not indicate in the initial petition that the beneficiary would perform such duties in the United States. To the contrary, the petitioner originally described a business strategy that would not utilize part of the beneficiary's purported specialized knowledge. The petitioner states that it plans to import three-year old Marwari horses into the United States for immediate resale and that the beneficiary will be "helping the horses get used to their new environment and de-stressing from their long journey." Not until its response to the Request for Evidence does the petitioner claim that the beneficiary will train these Marwari horses in the United States. Furthermore, not until its response to the Request for Evidence did the petitioner indicate that the beneficiary will prepare horses for participation in Indian weddings and festivals or that the petitioner plans to offer such services.

Accordingly, Citizenship and Immigration Services (CIS) will not consider the expanded description of the beneficiary's claimed specialized knowledge or job duties, both abroad and in the United States. In view of the above, the petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced horse trainer employed by the foreign entity, the petitioner, or in the industry at large. The AAO does not dispute the possibility that the beneficiary is a skilled and experienced horse trainer who has been, and would be, a valuable asset to the petitioning organization. However, this is not sufficient to establish that the beneficiary has been or will be employed in a specialized knowledge capacity. It has not been established that the beneficiary has advanced knowledge which is uncommon, noteworthy, or distinguished by some unusual quality, and not generally known by others in the beneficiary's field of endeavor, or that his knowledge distinguishes him from those with only elementary or basic knowledge. 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).

Moreover, the petitioner offers no explanation for the numerous inconsistencies in the record resulting from its response to the Request for Evidence. For example, the petitioner submitted with the initial petition a substantial business plan which fails to address the training and provision of horses for Indian weddings and festivals. However, in response to the Request for Evidence, the petitioner identifies this service for the first time. Also, the petitioner's business plan indicates that it will import three-year old Marwari horses into the United States for resale and that the beneficiary will be "helping the horses get used to their new environment and de-stressing from their long journey." However, in response to the Request for Evidence, the beneficiary is described as training these horses. 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). 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. *Id.* at 591.

Regardless, even if CIS considered the petitioner's expanded description of the beneficiary's claimed specialized knowledge, foreign job duties, and proposed job duties in the United States, the petitioner nevertheless failed to establish that the beneficiary has been or will be employed 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(1)(3). The petitioner must submit a detailed job description of the services that were and will be performed sufficient to establish that he has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's position abroad and in the United States requires "specialized knowledge" and that the beneficiary had been and will be employed abroad in a "specialized knowledge" capacity, 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 similarly experienced horse trainers employed by the foreign entity or in the industry at large. Once again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). 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, *aff'd*, 905, F.2d 41.

The petitioner describes the beneficiary as having specialized knowledge of (1) the training, development, and care of the Marwari breed of horse; and (2) the training of horses to perform in Hindu and Sikh wedding ceremonies and other traditional festivals and events. However, the petitioner never explains what, exactly, distinguishes the training of Marwari horses from other horse breeds or why the knowledge of Marwari horses is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by other

experienced horse trainers in general. Furthermore, the petitioner never explains what, exactly, distinguishes the training of horses to perform in Hindu and Sikh weddings, festivals, and events from the training of horses generally to participate in events. The only qualities attributed to these specially trained horses -- skills which allegedly can only be imparted by the beneficiary and similarly "specialized" trainers -- involve tolerance to loud music, small children, and crowds; dancing; sitting on command; and eating Bengal gram. However, the petitioner never explains what, exactly, distinguishes the training methods or processes for these qualities from training horses in general or why the ability to train horses to do these things is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by other experienced horse trainers.

Finally, even if the petitioner could establish that the beneficiary's knowledge or Marwari horses and the training of horses to perform in Indian weddings and festivals constitute "specialized knowledge" in the United States, the petitioner has failed to establish that the beneficiary was employed in a specialized knowledge capacity in India. According to the petitioner, India is the origin of both the Marwari horse and the cultural traditions for which horses need to be trained as participants. The record is devoid of evidence, and counsel does not even attempt to address, whether this purported specialized knowledge is noteworthy, uncommon, or distinguished by some unusual quality *in India*. To the contrary, given that the beneficiary apparently acquired these skills during his employment by other stables in India, it appears from the record that his knowledge is not "specialized knowledge" as defined by the Acts and in the regulations.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioning organization. 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*, 18 I&N 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.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the foreign entity or by horse trainers employed elsewhere. As the petitioner has failed to document any materially unique qualities to the beneficiary's knowledge, 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 similarly experienced horse trainer or that he has received special training in the company's methodologies or processes which would separate him from other workers employed with the foreign entity or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

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 was not employed abroad in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the foreign entity.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (*i.e.*, one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). If one individual owns a majority interest in the petitioner and the foreign employer, and controls those entities, then the entities will be deemed to be "affiliates" under the definition. 8 C.F.R. § 214.2(l)(1)(ii)(L).

In this matter, the petitioner asserts that it and the foreign employer are both owned and controlled by [REDACTED]. However, the record is devoid of evidence establishing that the [REDACTED] owns and controls the petitioner, an Oregon limited liability company. The petitioner failed to submit an operating agreement, membership certificate, or other evidence establishing whom, exactly, owns and controls the petitioner. *See generally* Or. Rev. Stat. Ch. 63 (2005). Once again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Accordingly, the petitioner failed to establish that it has a qualifying relationship with the foreign entity, and 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.