

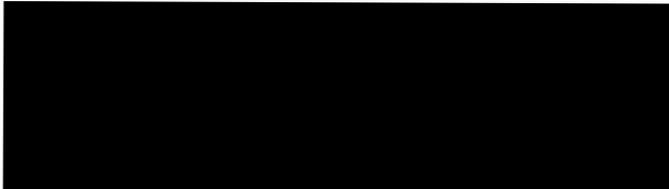
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U.S. Citizenship
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Services

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File: WAC 08 096 52652 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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

The petitioner, an information technology consulting firm, filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1B 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 a subsidiary of an information technology firm located in India.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been and will be employed in a capacity that requires specialized knowledge.

On appeal, counsel asserts that the director erred and that the petitioner established that the beneficiary has specialized knowledge and that he has been and will be employed in a specialized knowledge capacity. Counsel also argues that the director's Request for Evidence failed to give adequate notice to the petitioner of any deficiencies in its petition.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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

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.

Finally, the anti-"job shop" provisions of section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004).¹

I. Specialized Knowledge

In this matter, the petitioner describes its information technology services, the beneficiary's proposed duties in the United States, and the beneficiary's purported specialized knowledge in a letter dated February 13, 2008 as follows:

[The petitioning organization] is an information technology ("IT") services and outsourcing company which currently employs more than 250 IT professionals in five countries and serves more than 125 clients globally. Global solutions offered by [the petitioning organization] are

¹ The term "job shop" is commonly used to describe a firm that petitions for aliens in L-1B status to contract their services to other companies, often at wages that undercut the salaries paid to United States workers. Upon introducing the L-1 Visa Reform Act of 2004, Senator Saxby Chambliss described the abuse as follows:

The situation in question arises when a company with both foreign and U.S.-based operations obtains an L-1 visa to transfer a foreign employee who has "specialized knowledge" of the company's product or processes. The problem occurs only when an employee with specialized knowledge is placed offsite at the business location of a third party company. In this context, if the L-1 employee does not bring anything more than generic knowledge of the third party company's operations, the foreign worker is acting more like an H-1B professional than a true intracompany transferee. Outsourcing an L-1 worker in this way has resulted in American workers being displaced at the third party company.

149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003). In general, the L-1B visa classification does not include the same U.S. worker protection provisions as the H-1B visa classification. *See generally*, 8 C.F.R. §§ 214.2(h) and (l).

focused in the domain of Enterprise Resource Planning (ERP) and Business Intelligence/Data Warehousing (BI/DW) and are organized along three service lines – Application Implementation Services, Application Development Services and Application Management Services. Major multinational corporations including . . . Johnson Controls Inc. . . . are among some of [the petitioning organization's] clients.

* * *

[The petitioning organization's] customer relationship with Johnson Controls, Inc. ("JCI") began in 2007. [The petitioning organization's] contractual obligations to JCI require [the petitioning organization] to locate several senior members of its application development leadership team to work at JCI locations in various technical capacities over the next several years. This U.S. work scope has been subcontracted to [the petitioner]. The presence of these managers and project leaders is required to ensure the accelerated product development cycles, and to effectively coordinate work scope definition, systems analysis, process mapping, system design and testing, system implementation between JCI's Application Development leadership team and the [petitioning organization's] Applications Development operations in Chennai. Virtually all actual software design, system engineering and system programming work will continue to be executed at [the petitioning organization's] development and implementation operations center located in Chennai.

* * *

[The beneficiary] has accepted the specialty position of Systems Analyst with [the petitioner] in the United States for specific projects at [JCI,] a U.S. Fortune 100 company and global leader in automotive interiors. JCI is requesting assistance in the implementation of [ERP] applications for their use in planning, procurement and inventory management, which will be required to interface with JCI's existing SAP applications. The project will require conversion to the new MPG/PRO eB2 manufacturing application.

[The beneficiary] has specialized expertise in ERP applications, and while in the U.S., he will be responsible for customizing purchasing and inventory applications for these functions. Initially, [the beneficiary] will be required to gather information from the client to ensure a smooth and successful transition including design of utilities for data conversion, code review, deployment and documentation of the solution, final testing, and continuous communication of status updates to the Project Leader. He will also be required to provide documentation of the new application and train JCI personnel as needed.

As Systems Analyst, [the beneficiary] will initially be required to obtain in-depth understanding of user requirements for specific functions. Then, working with the customer's middle management, [the beneficiary] will define the business model, map the business process to the application in accordance with user requirements, and develop a workable model. He will prepare gap analysis documents and functional specifications required to plan custom

programming. He will also conduct trainings and user workshops, prepare and revise document user manuals for new applications, work with clients to extract data from legacy systems, execute transfers to new enterprise applications, and provide ongoing dedicated support to the customer upon project completion.

[The beneficiary] has special expertise in QAD and ERP implementation and development, and he has been working as a Systems Analyst with [the petitioning organization] on MRG/PRO eB2 conversions for [the petitioning organization's clients] in various domains since August of 2004. As a result, he has acquired considerable experience and an in-depth understanding of [the petitioning organization's] software design specifications and protocols for the development of applications modules to address the information technology needs of the global automobile manufacturing business including purchasing, accounting, inventory control, and manufacturing. [The beneficiary] will now utilize this knowledge on similar applications development projects for JCI in the United States, with an emphasis on software application re-engineering projects related to JCI's sales, purchasing, and inventory control processes.

The petitioner also submitted an organizational chart for the United States operation. The chart, which depicts a complex, multi-tiered organizational structure, portrays the beneficiary's position as the second lowest in the hierarchy and as working beneath two "leaders" and two "managers."

Finally, the petitioner submitted a Master Services Agreement between it and JCI. This agreement indicates, *inter alia*, that JCI reserves the right to order the removal of the petitioner's software workers, including the beneficiary, from its worksite at any time. Furthermore, all of the petitioner's workers, including the beneficiary, must adhere to JCI's policies and procedures applicable to its worksite.

On February 25, 2008, the director requested additional evidence. The director requested, *inter alia*, further evidence pertaining to the staffing and organization of both the United States and foreign employers and the educational backgrounds and experience of other workers employed as "systems analysts."

In response, counsel submitted a letter dated April 2, 2008 in which she asserts that the beneficiary gained his purported specialized knowledge through working on related projects in Asia. She also claims that the beneficiary completed the petitioning organization's "intensive training program in its project methodologies." However, counsel not only failed to specifically describe the length and nature of this training program, she states that "all TSL employees" must complete this training program.

On April 30, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been and will be employed in a capacity that requires specialized knowledge.

On appeal, counsel asserts that the director erred and that the petitioner established that the beneficiary has specialized knowledge and that he has been and will be employed in a specialized knowledge capacity. Counsel argues as follows:

[The beneficiary's] specific role requires special and advanced knowledge in several technical IT areas that can only be gained by years of experience in systems analysis, applications development, [and] systems integration specific to the implementation of large scale ERP software applications. It also requires specialized and advanced knowledge of the automotive industry international standards for global supply chain management operations, including such functions as inventory control, order entry, "reverse auction" and purchasing, product configurator, part and component inventory ID coding standards[,] supply chain planning, customer and supplier delivery and shipping scheduling, inspection of goods, claims processing, etc. Equally important, the position requires an advanced level of knowledge of the [the petitioning organization's] project management processes, its software design protocols, programming/coding standards, and data conversion loading and testing protocols. As a team leader for the development of the purchasing and inventory modules, the position requires advanced knowledge of [the petitioning organization's] internal cost structure, its project expense coding protocols and accounting methods, and its standard contractual definitions of [scope of work] and level of service requirements.

Counsel also argues that the director's Request for Evidence failed to give adequate notice to the petitioner of any deficiencies in its petition.

Upon review, counsel's assertions are not persuasive.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *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, the petitioner fails to establish that the beneficiary's position abroad or in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner and its counsel repeatedly assert that the beneficiary's positions require "specialized knowledge," the petitioner and its counsel have not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced systems analysts or software workers employed by the petitioning organization or in the industry in general. 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 petitioner claims that the beneficiary has specialized knowledge of "QAD and ERP implementation and development" and the petitioner's "software design specifications and protocols for the development of applications modules to address the information technology needs of the global automobile manufacturing business including purchasing, accounting, inventory control, and manufacturing." On appeal, counsel further

asserts that the beneficiary has "specialized and advanced knowledge of the automotive industry" and adds such functions as order entry, reverse auction, product configuration, part and component inventory identification coding standards, supply chain planning, customer and supplier delivery and shipping scheduling, inspection of goods, and claims processing. Finally, counsel argues on appeal that the beneficiary also has "an advanced level of knowledge" of the petitioner's project management processes, programming/coding standards, data conversion loading and testing protocols, internal cost structure, project expense coding protocols and accounting methods, and standard contractual definitions of scope of work and level of service requirements.

However, the petitioner fails to adequately set apart the beneficiary's purported specialized knowledge from the common or average knowledge possessed by others employed by the petitioning organization or in the industry in general. Because "special" and "advanced" are comparative terms, the petitioner must provide evidence that allows CIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's industry. In this matter, the petitioner claims that the beneficiary acquired his knowledge through "years of experience." However, it is unclear how many years of experience are needed to impart the claimed special or advanced knowledge or, importantly, whether these years of experience must be spent working with the petitioning organization. Also, while the petitioner claims that the beneficiary participated in an "intensive training program in its project methodologies," it is unclear whether this training imparted specialized knowledge to the beneficiary. Furthermore, the petitioner failed to specifically describe the length and nature of this training program or to explain how many of the petitioning organization's workers participate in this training. In fact, given that counsel states that "all TSL employees" must complete this training program, it appears that the beneficiary's training was not responsible for imparting any special or advanced knowledge. Overall, the record is not persuasive in establishing that the beneficiary possesses knowledge that is special or advanced which can be set apart from the common knowledge possessed by other systems analysts employed by the petitioning organization or in the industry in general. 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.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced systems analyst. However, there is no indication that the beneficiary has any knowledge that exceeds that of any experienced systems analyst, or that he has received special training in the company's methodologies or processes which would separate him from any other workers employed within the petitioner's organization. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). Specialized knowledge requires more than a short period of experience, otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *Id.* at 52.

Based on the evidence presented, the petitioner has not established that the beneficiary has specialized knowledge or that he has been or would be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.²

II. L-1 Visa Reform Act

Beyond the decision of the director, the petitioner has failed to establish that the conditions of the beneficiary's proposed L-1B employment at the worksite of the unaffiliated employer, JCI (the "unaffiliated employer"), are in compliance with the terms of the L-1 Visa Reform Act of 2004. Assuming *arguendo* that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition.

One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. See 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003); see also Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <http://judiciary.senate.gov/member_statement.cfm?id=878&wit_id=3355> (accessed on September 5, 2008).

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

² As noted above, counsel also argues that the director's Request for Evidence failed to give adequate notice to the petitioner of any deficiencies in its petition. As relief, counsel requests that the AAO remand the petition to the director for approval or for the issuance of a Request for Evidence which gives "adequate notice and sufficient information to respond." Upon review, the AAO does not concur with counsel's observations or the appropriateness of the requested relief. The issuance of a Request for Evidence where a petition fails to demonstrate eligibility is now, and has been since before this petition was filed, entirely discretionary. 8 C.F.R. § 103.2(b)(8)(ii) (2008). Accordingly, the director could have, in her discretion, denied the petition outright without issuing a Request for Evidence due to the lack of initial evidence sufficient to establish eligibility for the benefit sought. *Id.* It is emphasized that the burden of proof in these proceedings rests entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Furthermore, it is noted that the AAO reviews decisions of the director *de novo*. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). If the petitioner believed that the record of proceeding was inadequate to establish eligibility for the benefit sought, it could have supplemented the record on appeal. However, the petitioner chose not to submit any additional evidence of the beneficiary's purported specialized knowledge for the AAO to consider on appeal. Accordingly, the appeal will be dismissed for the reasons set forth herein.

If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner bears the burden of proving eligibility. Section 291 of the Act; *see also* 8 C.F.R. § 103.2(b)(1).

A. Threshold Question: Worksite of Beneficiary

As a threshold question in the analysis, CIS must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. Section 214(c)(2)(F) of the Act.

The petitioner indicated on the Form I-129 petition and in accompanying statements that the beneficiary will be employed at the offices of JCI, the unaffiliated employer. In response to Question 13 on the Form I-129 Supplement L, the petitioner answered "Yes" when asked: "Will the beneficiary be stationed primarily offsite (at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent)?" The AAO concludes that the beneficiary will be primarily employed as a systems analyst at the worksite of an unaffiliated employer, thereby triggering the provisions of the L-1 Visa Reform Act.

The petitioner therefore must establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

B. Control and Supervision of Beneficiary

The first issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. Section 214(c)(2)(F)(i) of the Act.

Upon review, the AAO concludes that the petitioner has not satisfied this prong of the L-1 Visa Reform Act test. The petitioner claims that the beneficiary will work at the unaffiliated employer's "manufacturing IT competency center" in Plymouth, Michigan, in accordance with a Master Services Agreement. Pursuant to this agreement, the beneficiary will assist in implementing ERP applications for the unaffiliated employer's use in "planning, procurement and inventory management, which will be required to interface with [the unaffiliated employer's] existing SAP applications." The beneficiary will also be responsible for customizing purchasing and inventory applications and gathering information from the unaffiliated employer to "ensure a smooth and successful transition including design of utilities for data conversion, code review, deployment and documentation of the solution, final testing, and continuous communication of status updates to the Project Leader." He will also train unaffiliated employer personnel, work with the customer's middle management, and "work with clients to extract data from legacy systems, execute transfers to new enterprise applications, and provide ongoing dedicated support to the customer upon project completion." Under the agreement, the unaffiliated employer reserves the right to order the removal of the petitioner's software workers, including the beneficiary, from its worksite at any time. Furthermore, all of the petitioner's workers, including the beneficiary, must adhere to the unaffiliated employer's policies and procedures applicable to its worksite.

Although the petitioner claims that the beneficiary will report to a "project leader" employed by the petitioner, the petitioner did not describe "the amount of time each supervisor is expected to control and supervise the [beneficiary's] work" as required by question 13 in section 1 of the L Classification Supplement.

Overall, the record is not persuasive in establishing that the beneficiary will more likely than not be controlled and supervised principally by the petitioner. To the contrary, given the hands-on nature of the work to be performed by the beneficiary, his anticipated interaction with the unaffiliated employer's management, and the physical location of the work, it appears more likely than not that the beneficiary will be principally supervised and controlled by the unaffiliated employer. It appears that the beneficiary will only give "status updates" to the project leader. Once again, going on record without supporting evidence will not satisfy the petitioner's burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO finds, therefore, that the petitioner has failed to meet its burden of establishing that the beneficiary would be controlled and supervised principally by the petitioning company and has not satisfied the requirements of Section 214(c)(2)(F)(i) of the Act. On this basis alone, the petition must be denied.

C. Necessity of Specialized Knowledge Specific to the Petitioning Employer

The second issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary's placement will be related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act. As discussed below, the petitioner also fails to meet the requirements of this section of the Act.

Question 13 on the Form I-129 Supplement L asks the petitioner to "describe the reasons why placement at another worksite outside the petitioner, subsidiary, or parent is needed." The petitioner is also instructed to "[i]nclude a description of how the beneficiary's duties at another worksite relate to the need for the specialized knowledge he or she possesses." On appeal, counsel explains that the beneficiary's assignment "requires specialized and advanced knowledge of the automotive industry international standards for global supply chain management operations, including such functions as inventory control, order entry, 'reverse auction' and purchasing, product configurator [sic], part and component inventory ID coding standards[,] supply chain planning, customer and supplier delivery and shipping scheduling, inspection of goods, claims processing, etc." The petitioner describes the unaffiliated employer as a "global leader in automotive interiors."

Upon review, the petitioner has not established that the beneficiary's placement at the unaffiliated employer's worksite is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

In evaluating the criteria at section 214(c)(2)(F)(ii) of the Act, the critical focus of the inquiry is not whether the beneficiary will perform non-professional services or labor for wages, but whether the beneficiary's services at the unaffiliated employer's worksite will require specialized knowledge specific to the petitioning employer. Although the common use of the term "labor for hire" may imply physical labor or work for wages rather than salary, the petitioner will not satisfy this test by demonstrating that the beneficiary is an independent, salaried, or professional employee. This interpretation would lead to absurd results, causing the

adjudicator to stray from the intent of the statutory test - prohibiting the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with common tools or "widely available" computer software. *See* 149 Cong. Rec. at S11686.

When read as a whole, the statutory language is plain and unambiguous. By using the words "rather than" in the same sentence with the term "labor for hire," Congress clearly intended the bar on labor for hire to mean situations where the placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is not necessary. Section 214(c)(2)(F)(ii) of the Act.

Accordingly, the petitioner must demonstrate in the first instance that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is specific to the petitioning employer. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.

As previously discussed, the petitioner has failed to establish this element. With regard to the beneficiary's claimed knowledge, the petitioner has failed to describe with any clarity what constitutes the beneficiary's specialized knowledge, how such knowledge relates specifically to the petitioning company, or how this knowledge would be applied by the beneficiary in the course of fulfilling his assigned duties at the worksite of the unaffiliated employer. Furthermore, it appears that the beneficiary's proposed position requires knowledge more related to the industry of the unaffiliated employer than to the petitioner's processes and procedures. Based on the limited evidence in the record, it appears that it is the beneficiary's technical skill set and general knowledge of the automotive industry, and not his specialized knowledge related to the petitioning company, which made him a viable candidate for the position with the unaffiliated employer.

While it is possible that the beneficiary here possesses knowledge that is directly related to both the petitioner and the unaffiliated employer's product or service, it is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that primarily requires knowledge specific to the petitioner. Otherwise, the beneficiary and the position for which he is being hired would fall squarely within the prohibition imposed by the L-1 Visa Reform Act of 2004 on the "outsourcing" of L-1B nonimmigrants who do not have specialized knowledge related to the provision of a product or service specific to a petitioner.

A review of the facts of this petition reveal that this is exactly the type of employment relationship the L-1 Visa Reform Act of 2004 was enacted to prohibit. As explained above, this legislation was enacted to prevent the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software. In this matter, the petitioner indicated that the beneficiary's project involves the "implementation of [ERP] applications for their use in planning, procurement and inventory management, which will be required to interface with [the unaffiliated employer's] existing SAP applications" and the "conversion to the new MPG/PRO eB2 manufacturing application." Critically, there is no evidence that the petitioner is providing the beneficiary's services in connection with the sale of any technology products or that the beneficiary's offsite employment requires any specialized knowledge specific to the petitioner's operations. Instead, the evidence and the petitioner's own claims indicate that the petitioner is providing general IT services to the unaffiliated employer, as if the petitioner was an in-house IT shop.

Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, and the petition may not be approved.

III. Conclusion

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 at 1002 n. 9 (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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.