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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

File: EAC 08 103 52306 Office: VERMONT SERVICE CENTER Date: JUL 28 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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, a British travel agency, filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge to open a new office in the United States 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 claims to be an affiliate of a newly established travel agency located in the United States.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity. Specifically, counsel argues that the beneficiary has specialized knowledge of travel to the petitioning organization's upscale holiday destinations and of the petitioning organization's booking, accounting, and invoicing systems, i.e., Phenix, Travelink, Amadeus, and Galileo. In support, counsel submits a brief and additional evidence pertaining to the beneficiary's claimed specialized knowledge.

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 services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (vi).

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 proposed duties in the United States in a letter dated February 5, 2008 as follows:

> As a Personal Travel Consultant, [the beneficiary] will be responsible for training American employees to package tailor-made luxury holidays on the complete range of long-haul destinations that [the United States operation] offer[s]. [The beneficiary] will ensure that full training is given for the highest level of customer service to be put into practice, this will encourage all customer's [sic] to continually return to [the petitioning organization] in order for the American employees to develop their own base of regular clients.

The petitioner also submitted a copy of the beneficiary's resume, which indicates that the beneficiary was employed in the travel industry for over six years prior to becoming employed by the petitioner in 2006.

Finally, counsel asserts in a letter dated February 22, 2008 that the beneficiary "meets the requirements" of one having specialized knowledge as "[he] is responsible for selling tailor-made luxury holidays to far and away destinations for extremely exigent clients."

On April 28, 2008, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary's knowledge can be distinguished from those with only elementary or basic knowledge; an explanation addressing how the beneficiary's knowledge is not general knowledge held commonly throughout the industry and in the petitioning organization but rather is truly special or advanced; a more detailed description of the systems or products of which the beneficiary purportedly has specialized knowledge; an explanation of how

the beneficiary's duties are different from those of similarly employed workers; and an indication of pertinent training courses in which the beneficiary has been enrolled since becoming employed by the petitioner.

In response, the petitioner submitted a letter dated May 1, 2008 in which the petitioner claims that the beneficiary's "product knowledge" pertaining to travel to the petitioner's "key destinations," i.e., Dubai, Mauritius, Maldives, Oman, Abu Dhabi, Seychelles, Thailand, and South Africa, is not commonly held amongst United States travel agents. The petitioner also claims that the beneficiary's knowledge of the petitioner's internal, proprietary booking system, Phenix, is not held outside of the organization. The petitioner indicates that Phenix, along with Travelink, are used approximately 80% of the time and that both "are specialist systems that currently take 4 weeks full time training and then ongoing supervision for up to a year to become a fully competent user." The petitioner further claims that knowledge of these systems is "unique" to the petitioning organization. Finally, the petitioner notes that the beneficiary will provide training to new employees in the United States on his areas of specialization.

The petitioner also submitted a list of the beneficiary's claimed "specialist training." This list includes a variety of one day sessions apparently led by airlines and resorts, online training, and training in systems and sales conducted in March and April 2006. The list does not specifically include any formal training pertaining to Phenix or the other systems listed in the May 1, 2008 letter, even though the petitioner claims that four weeks of full-time training is necessary to impart the claimed specialized knowledge of Phenix to an employee.

On May 9, 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 will be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity. Specifically, counsel argues that the beneficiary has specialized knowledge of travel to the petitioning organization's upscale holiday destinations and of the petitioning organization's booking, accounting, and invoicing systems, i.e., Phenix, Travelink, Amadeus, and Galileo. In support, counsel submits a brief and additional evidence pertaining to the beneficiary's claimed specialized knowledge.

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

As a threshold issue, it is noted that counsel's attempt on appeal to supplement the record with additional evidence pertaining to the beneficiary's claimed specialized knowledge was inappropriate and will not be considered by the AAO. The director specifically requested additional evidence addressing the beneficiary's claimed specialized knowledge in his Request for Evidence. The petitioner failed to submit sufficient evidence, and now counsel is attempting to supplement the record on appeal with an affidavit. However, as the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The L-1B specialized knowledge classification requires U.S. Citizenship and Immigration Services (USCIS) to distinguish between those employees who possess specialized knowledge from those who do not possess such knowledge. Exactly where USCIS should draw that line is the question before the AAO. On one end of the spectrum, one may find an employee with the minimum one-year of experience but only the basic job-related skill or knowledge that was acquired through that employment. Such a person would not be deemed to possess specialized knowledge under section 101(a)(15)(L) of the Act. On the other end of the spectrum, one may find an employee with ten years of experience and advanced training who developed a product or process that is narrowly understood by a few people within the company. That individual would clearly meet the statutory standard for specialized knowledge. In between these two extremes would fall, however, the whole range of experience and knowledge that may be found within a workplace.

Looking to the language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

> This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf.* Westen, *The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).[1]

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the principles of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23,* 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, the AAO must look to the language of section 214(c)(2)(B) itself, that is, the terms "special" and "advanced." Like the courts, the AAO customarily turns to dictionaries for help in determining whether a word in a statute has a plain or common meaning. *See, e.g., In re A.H. Robins Co.*, 109 F.3d 965, 967-68 (4th Cir. 1997) (using *Webster's Dictionary* for "therefore"). According to *Webster's New College Dictionary*, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." *Webster's New College Dictionary*, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

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[1] Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee 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." *See* 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 (Nov. 12, 1969).

Neither in 1970 nor in 1990 did Congress provide a controlling, unambiguous definition of "specialized knowledge," and a narrow interpretation is consistent with so much of the legislative intent as it is possible to determine. H. Rep. No. 91-851 at 6, 1970 U.S.C.C.A.N. at 2754. This interpretation is consistent with legislative history, which has been largely supportive of a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." 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). 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. In other words, specialized knowledge generally 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. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and prove that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

In examining the specialized knowledge 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. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary will be employed in the United States in a "specialized knowledge" capacity, the petitioner has 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 "personal travel consultants" employed by the petitioning organization or in the industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990). As noted above, the director specifically requested evidence establishing that the beneficiary's knowledge is different from those of other persons employed by the petitioner. However, as noted by the director, the petitioner did not submit the requested evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner asserts that the beneficiary possesses specialized knowledge of travel to the petitioner's listed "key destinations," of the petitioner's internal booking system, Phenix, and of three other systems used by the petitioning organization, i.e., Travelink, Amadeus, and Galileo. The petitioner claims that this knowledge is either not widely held outside of its organization or is internal and proprietary to the petitioner. Finally, the petitioner claims Phenix, which is allegedly unique to the organization, and Travelink "are specialist systems that currently take 4 weeks full time training and then ongoing supervision for up to a year to become a fully competent user."

However, despite this claim, the record does not establish how, exactly, this knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or in the industry at large. The record does not establish what qualities of the Phenix system, or other systems employed by the petitioner, are of such complexity that the impartation of this knowledge amounts to the acquisition of special or advanced knowledge. Likewise, the record does not establish what qualities or aspects of travel to the petitioner's "key destinations" cause this knowledge to be special or advanced. Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's knowledge cannot be imparted to a similarly experienced "personal travel consultant" in a relatively short period of time. 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)). As noted above, the beneficiary was previously employed by travel agencies and appears to have gained most of his experience in this field prior to first becoming employed by the petitioner approximately two years prior to the filing of the petition. Furthermore, the record does not establish that the beneficiary has received any training in using the Phenix, Travelink, Amadeus, or Galileo systems, or in travel to the "key destinations," or that his two years of experience with the petitioner imparted the claimed specialized knowledge to him. Accordingly, the record is not persuasive in establishing that the beneficiary will be a "key" employee having special or advanced knowledge of a company product, the application of this product, or a process or procedure of the petitioning organization.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by travel agents generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's processes or products does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced travel agent is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's processes, procedures, or technologies do not establish that any knowledge of these is "specialized" or "advanced." Rather, the petitioner must establish that qualities of the processes, procedures, and technologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers outside of the petitioning organization may not have very specific, proprietary knowledge regarding the petitioner's products, procedures, or technologies is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced worker. The record in this matter is not only devoid of evidence establishing that a four-week training session, followed by ongoing supervision, is necessary to impart the claimed specialized knowledge in the Phenix system, it is not credible that, even if a four-week training session was required for new employees, that this amounts to the impartation of special or advanced knowledge within the scope of the Act.[2]

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced personal travel consultant. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced travel agent, or that he has received special training in the company's methodologies or processes which would separate him from any other worker employed within the petitioner's organization or in the industry at-large. 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. *See Matter of Penner*, 18 I&N Dec. at 52.

Based on the evidence presented, the petitioner has not established that the beneficiary has specialized knowledge or that he would be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.[3]

Beyond the decision of the director, the petitioner has also not established that the beneficiary was employed abroad in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(iv).

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[2]It is noted that the director indicates in his decision that the petitioner failed to establish the "proprietary nature" of the petitioner's systems. As explained above, whether or not a system is "proprietary" is not a prerequisite for establishing that a beneficiary's knowledge of that system is special or advanced. Accordingly, to the extent this statement by the director implies that the petitioner was required to establish that its system was proprietary in order to establish eligibility for the benefit sought, this statement is withdrawn.

[3]Counsel cited the Foreign Affairs Manual (FAM) as authority. It must be noted that the FAM is not binding upon USCIS. *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

The petitioner described the beneficiary's "specific duties" in the United Kingdom in a document titled "job description" as follows:

> [The beneficiary's] day to day duties include taking phone call and web enquiries, putting together a suitable and unique tailor-made holiday, specific to the customers' individual requirements and sending them a personalised quotation. Once the client is happy with the details, the consultant will then confirm the booking with the relevant airline and hotel and proceed with the booking. The consultant ensures that the client has their personal email address and free-phone direct line to guarantee continuity of service.

Similar to the United States position, although the petitioner repeatedly asserts that the beneficiary was employed abroad in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced workers employed by the petitioning organization 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). As with the proffered position in the United States, the record does not establish how, exactly, the beneficiary's knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or in the industry at-large. It is not credible that an employee who performs the basic travel agent duties described by the petitioner could be considered as one employed in a "specialized knowledge" capacity.

Beyond the decision of the director, the petitioner has not established that the United States operation has secured sufficient premises to house the new office.

The petitioner claims in the L Classification Supplement to Form I-129 that the beneficiary is coming to the United States to open a "new office." If the petitioner indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or be employed in a new office, the regulation at 8 C.F.R. § 214.2(l)(3)(vi) requires the petitioner to submit evidence that:

> (A) Sufficient physical premises to house the new office have been secured;
>
> (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
>
> (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

In this matter, as evidence of the United States operation securing sufficient physical premises, the petitioner submitted an "Office Lease" dated February 1, 2008. The lessee is Travel Counsellors, LLC, a Florida limited liability company. However, the petitioner claims that the beneficiary will be employed by a New Jersey limited liability company called Destinology LLC. The record is devoid of evidence addressing what connection, if any, exists between Travel Counsellors, LLC and Destinology LLC.

Accordingly, the record does not establish that the United States operation has secured sufficient premises to house the new office, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner failed to establish that it and the United States operation are qualifying organizations.

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 "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." *See also* 8 C.F.R. § 214.2(l)(3)(vi)(B). Title 8 C.F.R. § 214.2(l)(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" and "is or will be doing business." An "affiliate" is defined in part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual." 8 C.F.R. § 214.2(l)(1)(L)(*1*).

In this matter, the petitioner claims that it and the United States organization are owned and controlled by the same individual. However, the record is devoid of evidence establishing the ownership and control of either entity. 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). If the required initial evidence is not submitted with the petition or does not demonstrate eligibility, USCIS may in its discretion deny the petition. 8 C.F.R. § 103.2(b)(8)(ii).

Accordingly, as the petitioner failed to establish that it has a qualifying relationship with the United States operation, the petition may not be approved for this additional reason.

Finally, counsel on appeal notes that this petition "presents facts and issues which are identical" to other petitions recently approved by the Vermont Service Center and filed by the same petitioner for the same position, personal travel consultant, i.e., EAC 08 103 52333 and EAC 08 103 51577. In view of the instant decision, it appears that these two petitions were likely approved in error. Accordingly, the director will be directed to review these two petitions and consider them for revocation pursuant to 8 C.F.R. § 214.2(l)(9).

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.

FURTHER ORDERED: The director shall review the following approved petitions and consider them for possible revocation pursuant to 8 C.F.R. § 214.2(l)(9): EAC 08 103 52333 and EAC 08 103 51577.