

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7

File: WAC 08 027 51393

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 30 2009

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:

SELF-REPRESENTED

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, 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, a California corporation, filed this nonimmigrant visa petition to employ of the beneficiary in the position of programmer analyst 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 claims to be the parent company of the beneficiary's foreign employer in India.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. Specifically, the director determined that the record does not establish that the beneficiary's computer skills constitute specialized knowledge or that specialized knowledge is required to perform the duties of the position. The director further notes that the beneficiary was employed by the foreign entity for only 15 months prior to the filing of the instant petition and that the record is devoid of evidence establishing the beneficiary's acquisition of the purported specialized knowledge abroad.

On appeal, the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, the petitioner argues that the beneficiary has specialized knowledge of a proprietary development tool called "vista web," which is necessary for the project on which the beneficiary will work in the United States. In support, the petitioner submits additional evidence pertaining to the beneficiary's project in the United States and the "vista web" development tool.

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 has been or 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 (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 describes the beneficiary's duties abroad in the Form I-129 as follows:

Involved in all phases of Software Development Life Cycle (SDLC) that includes Systems Study, Design/Architect, Development, Implementation, Documentation, Builds, Code Management, Maintenance, Enhancements and Quality Control. Worked extensively in Java Beans, J2EE, STRUTS and design Patterns such as MVC, OOAD, Business Delegate, Data Access Objects.

The petitioner describes the beneficiary's proposed duties in the United States in the Form I-129 as follows:

Implementing STRUTS Framework and MVC Design paradigm for web module. Designing applications using MVC Architecture, OOAD (Object Oriented Analysis and Design), and UML. Development [sic] Java Beans to store and retrieve the date entered by the user and display them in the respective JSP pages.

The petitioner also submitted the beneficiary's resume. The resume indicates that the beneficiary began working for the foreign employer in August 2006, approximately 15 months prior to the filing of the instant petition. The resume also lists the beneficiary's "technical skills" and summarizes his work experience abroad. The beneficiary is describes as having approximately one year of "IT Experience" and to have knowledge of various computer programming and scripting languages, design tools, operating systems, and software package such as, *inter alia*, Java, HTML, MS Visio 2003, Windows, MS-Office.

On December 27, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's duties, an explanation addressing how the beneficiary's duties are different or unique from those of other workers employed by the petitioner or in the industry at-large, and an explanation addressing how the beneficiary's training differs from that provided to other workers in the field of endeavor.

In response, the petitioner submitted a letter dated January 15, 2008 in which it further describes the project on which the beneficiary will work in the United States, Right DB-Job Portal, and his proposed duties. The "job portal" is described as a "career website for technology and engineering professionals and the companies that seek to employ them." In working on this project, the petitioner describes the beneficiary's duties as follows:

At the present time, we are in need of a Programmer Analyst to participate in this application development project we are performing. This project includes the use of generally accepted application development practices in the design, documentation and implementation areas of this service.

Working with full life cycle software Development, which includes requirement & Object Oriented analysis, design, development, testing and documentation and writing Requirement Specification documents, design documents, Test cases and Analysis, User Training documents and Technical Help documents, Management of the work assignments, and handle the delivery and performance of a team, while personally taking part into [sic] the code writing, testing, bug fixing, technical support and documentation.

Programmer Analyst working in applications or systems development analyze users' needs and design, construct, test, and maintain computer applications software or systems. Programmer Analyst can be involved in the design and development of many types of software, including software for operating systems and network distribution, and compilers, which convert programs for execution on a computer. In programming, or coding, Programmer Analyst instruct[s] a computer, line by line, how to perform a function. He also solves technical problems that arise. Programmer Analyst must possess strong programming skills, but are more concerned with developing algorithms and analyzing and solving programming problems than with actually writing code. Programmer Analyst often works as part of a team that designs new hardware, software, and systems.

The petitioner also submitted a letter from the foreign entity dated January 14, 2008 in which the beneficiary is described as working abroad as a "programmer analyst." The beneficiary is described as working on three different projects during his approximately 15 months of employment – compliance system, multi-party video conferencing, and "TradeNet." In all these projects, the beneficiary is described as using computer skills relating to his knowledge of, *inter alia*, JDK 1.5, JSP, Struts 1.1, Java Script, and Microsoft Windows.

The petitioner did not describe any "training" provided to the beneficiary other than his university education, which was completed prior to his employment by the foreign entity 15 months preceding the filing of the instant petition. The petitioner also did not explain how the beneficiary's knowledge differs from the knowledge possessed by other programmers employed by the petitioning organization or in the industry at-large.

On June 14, 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 or will be employed in a capacity involving specialized knowledge.

On appeal, the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, the petitioner argues that the beneficiary has specialized knowledge of a proprietary development tool called "vista web," which is necessary for the project on which the beneficiary will work in the United States. In support, the petitioner submits additional evidence pertaining to the beneficiary's project in the United States and the "vista web" development tool.

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

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

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.

(3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

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 or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed 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 computer programmer 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).

The petitioner asserts that the beneficiary has approximately one year of "IT Experience" and has knowledge of various computer programming and scripting languages, design tools, operating systems, and software packages such as, *inter alia*, Java, HTML, MS Visio 2003, Windows, MS-Office. The petitioner further asserts that the beneficiary, as a computer programmer working on client projects, has used, and will use, this knowledge of "generally accepted application development practices" to design and develop software, and to program, or code, computers, which instructs "a computer, line by line, how to perform a function." On appeal, the petitioner asserts, for the first time, that the beneficiary also has specialized knowledge of a proprietary development tool called "vista web," which is purportedly necessary for the project on which the beneficiary will work in the United States. However, even though requested by the director, the petitioner failed to explain how the beneficiary's knowledge of "vista web," and the various computer programming and scripting languages, design tools, operating systems, and software packages listed in the record, is different or unique from those of other workers employed by the petitioner or in the industry at-large. The petitioner also failed to address how the beneficiary's training differed from that provided to other workers in the field of endeavor. 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).

Accordingly, despite the petitioner's claim, the record does not establish how, exactly, this knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or by computer programmers in the industry at-large. The record does not establish what qualities of his computer skills, as well as his claimed knowledge of the "vista web" development tool, are of such complexity that the impartation of this knowledge amounts to the acquisition of special or advanced knowledge. Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's knowledge cannot be imparted to a similarly experienced and educated computer programmer 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)). The petitioner does not articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge. Crucially, as the beneficiary has only been employed abroad

for 15 months prior to the filing of the petition, it is not credible that the beneficiary was able to acquire knowledge that is truly special or advanced in his first 3 months of employment so that he was able to be employed abroad in a specialized knowledge capacity for the requisite 1-year period. Accordingly, the record is not persuasive in establishing that the beneficiary has been or will be a "key" employee having special or advanced knowledge of a company product or service, the application of this product or service, or a process or procedure of the petitioning organization. As the beneficiary has apparently received no special training in "vista web" or any of the listed computer skills, and as the beneficiary had only had 3 months of work experience prior to the commencement of the requisite 1-year period of foreign employment in a specialized knowledge capacity, the record is not persuasive in establishing that the beneficiary's knowledge is truly special or advanced.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by computer programmers 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, e.g., vista web, 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 computer programmer is not "specialized knowledge." Moreover, the proprietary or unique qualities of vista web do not establish that any knowledge of this development tool is "special" 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 knowledge regarding the petitioner's enterprise 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 and educated worker.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced computer programmer. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced computer programmer, 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 was or will be employed in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(I)(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." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a

parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section" and "is or will be doing business." "Subsidiary" is defined in part as a legal entity "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K).

In this matter, the petitioner claims that it owns and controls the foreign employer. However, the record contains unresolved inconsistencies, which undermine this claim and call into question the true ownership and control of the foreign employer. For example, the petitioner submitted a "certificate" dated January 1, 2008 which indicates that it owns "100% Equity Shares" in the foreign employer, an Indian company. This ownership structure is also discussed in the foreign employer's company minutes from August 10, 2006. However, the foreign employer's "Memorandum of Association" dated October 2, 2003 lists two individuals as the owners of its equity shares. This conflicting ownership structure also appears in the foreign employer's "Articles of Association" dated October 3, 2003. The record is devoid of evidence establishing when, or if, these shares were ever sold to the petitioner. 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). 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, as it has not been established that the petitioner truly owns and controls the foreign employer, the petitioner has failed to establish that it and the foreign employer are qualifying organizations. It has also not been established that the beneficiary was employed abroad by a qualifying organization for 1 year as it has not been established when the petitioner acquired the foreign employer's equity shares, assuming this acquisition ever took place. Therefore, the petition may not be approved for these additional reasons.

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.