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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

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DATE: **JUL 14 2011** Office: CALIFORNIA SERVICE CENTER Date: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
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 filed this nonimmigrant visa petition seeking to employ the beneficiary an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), U.S.C. § 1101(a)(15)(L). The petitioner, a California limited liability company, is engaged in horse training and boarding. It claims to be the parent company of the beneficiary's employer in Germany. The petitioner seeks to employ the beneficiary in the position of "Manager, Assistant Rider" for a period of three years.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel indicates that the petitioner is submitting an expert opinion letter from equestrian Olympic Champion [REDACTED], who "states unequivocally that this beneficiary has 'unique qualifications'" and "highly specialized knowledge of the horses in her owner's stable and the individual style of the championship rider."

#### **I. The Law**

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.

Under section 101(a)(15)(L) of the Act, an alien is eligible for classification as a nonimmigrant if the alien, among other things, will be rendering services to the petitioning employer "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.

## II. Specialized Knowledge

The sole issue addressed by the director is whether the petitioner has established that the beneficiary has been and 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).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 4, 2008. In a letter dated December 3, 2008, counsel for the petitioner briefly described the beneficiary's experience, qualifications and proposed position as follows:

Please note that [REDACTED] is a respected horse trainer and rider. She does business through her limited liability company which is well financed with her personal funds, as well as trust and family resources. [The beneficiary] has been working for [REDACTED] in Germany, where [REDACTED] keeps some of her horses. Now, [the petitioner] has offered the position of US Manager, Assistant Rider to [the beneficiary]. This position requires an experienced individual who is intimately familiar with [the petitioner's] proprietary equestrian technique and with her very spirited horses. It is precisely in order to avail itself of [the beneficiary's] specialized knowledge that [the petitioner] is filing the within petition. While we are dealing with a small highly specialized enterprise, this is a classic L1B employment situation.

In a letter dated December 2, 2008, the petitioner stated that [REDACTED] is expecting a child and requires the beneficiary to provide "extensive assistance both in maintaining daily business operations and transferring several competition horses from Germany to America."

The petitioner described the proposed position as follows:

[The beneficiary] was offered a position of Manager, Assistant Rider. This position requires experience in all aspects of Barn Management, including training and riding competition horses, arranging veterinary care, maintaining health, training and travel records, making travel arrangements for participation in competitions and trade shows as well as accompanying horses during international travel, transport (both air and ground) and quarantine.

The petitioner indicated that the beneficiary has 3.5 years of experience as a Barn Manager and Assistant Rider of international, championship-level competition horses, and "extensive experience in all aspects of managing top level horses and the business of training and maintaining competition horses." The petitioner described the beneficiary's current duties for [REDACTED] as the following:

[The beneficiary] is currently responsible for the daily care of horses, including riding, feeding, exercise and basic veterinary care. She rides both the top-level international horses, and the up and coming young horse prospects. She makes all shoeing and veterinary appointments. She manages the worming and vaccination schedules for the competition horses. She inventories and orders all supplies, equipment, medication and supplements.

[The beneficiary] is responsible for setting an exercise and fitness regiment for all horses. [The beneficiary] is an accomplished and capable rider, on whom [the petitioner] relies to exercise and train all the horses currently in training for international competition in Europe. During the pregnancy of the proprietor of this company, [the beneficiary] has managed all European operations completely on her own.

[The beneficiary] also manages all travel arrangements. She has an International Driving License (non-expiring) for trucks and lorries, and is qualified to drive a full size trailer (articulated vehicle). She also has experience flying with horses overseas, which is essential for the upcoming transfer of horses from Germany to America.

[The beneficiary's] education and experience render her essential to the ongoing operations of [the petitioner]. Her unique combination of skills and knowledge are central to . . . [the petitioner's] achievement of her professional and competitive aspirations for the next four years, specifically qualification for the 2012 Olympic Games in London.

The petitioner submitted a copy of the beneficiary's resume. She indicates that she has been employed as Assistant Rider and Manger to [REDACTED] in Thedinghausen, Germany since January 2007, where she is responsible for "management, riding and training of International competition and sales horses for Championship Rider [REDACTED]." According to the beneficiary's resume, she previously worked as barn manager for

German Olympic team member and top-ranked rider, [REDACTED] in Thedinghausen, Germany, from July 2004 until December 2005.

The petitioner also submitted [REDACTED] resume and athletic record as an equestrian rider. [REDACTED] indicates that from 2006 until 2008, she trained as a professional show jumping rider with Olympic Team member [REDACTED] in Thedinghausen, German, during which time she represented Israel in international events, including qualification for the 2007 European Championships.

The director issued a request for additional evidence ("RFE") on December 12, 2008. The director requested that the petitioner explain how the duties the beneficiary performed abroad and those she will perform in the United States, are different from those of other workers employed by the petitioner or by other U.S. employers in the same type of position. The director also instructed the petitioner to explain in more detail exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and to explain how the beneficiary's training or experience is distinguished by some unusual quality and not generally known by practitioners in her field. Finally, the director requested additional information regarding the size and structure of the U.S. and foreign entities.

In a response dated December 23, 2008, counsel for the petitioner emphasized that "the position offered to [the beneficiary] requires an experienced individual who is intimately familiar with [REDACTED] proprietary equestrian technique and with her very spirited horses." Counsel noted that the beneficiary previously worked for [REDACTED] where [REDACTED] personally studied, and highlighted the fact that "the stables of [REDACTED] fielded the distinguished German Olympic Team." Counsel asserted that "it is not possible to fill this critical job with any horseman or stable boy." Finally, counsel stated that the beneficiary's "unique experience renders her a critical component in the anticipated success of this noble venture."

The petitioner's response also included a letter from [REDACTED] which boards the petitioner's horses in its stables in Germany. This letter states:

In connection with the employment of [the beneficiary] by [the petitioner], [the beneficiary] has acquired intimate knowledge of the training techniques used by this enterprise. This is confidential, proprietary information which is of substantial significance to the continued competition success of [the petitioner].

Because of our contractual relationship with [the petitioner] we are privy to the internal workings and equestrian training regimen utilized by [the petitioner]. We are aware of the specialized knowledge which [the beneficiary] possesses and understand that [the petitioner] wishes to use her expertise at the firm's US operation in California.

The director denied the petition on January 3, 2009, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a capacity requiring specialized knowledge. The director determined that the beneficiary's knowledge and experience in training, caring for and riding horses is no different from that of any experienced horse trainer, and noted that the petitioner had not explained why the beneficiary's duties could not be performed by a similarly trained and experienced worker.

On appeal, counsel indicates that the petitioner is submitting an expert opinion report from [REDACTED] of the United States Equestrian Federation, as well as supplemental information regarding the beneficiary's "specialized activities."

[REDACTED] is an Olympic gold medalist (2008) and is [REDACTED] High Performance Committee. In a letter dated January 29, 2009, he indicates that [REDACTED] is his friend and colleague, and that he is personally familiar with both [REDACTED] and the beneficiary based on their competitive record in top-level European competitions. He further states:

I am aware of [the beneficiary's] unique qualifications, and of the skills necessary to perform her job. Her work with [the petitioner] has been integral to her employer's success in the sport. As [REDACTED] friend and colleague, I know how important it is that [the beneficiary] continue to manage those horses after [REDACTED] relocation to California. I understand that she has been employed by [the petitioner] in Germany since January of 2007, as a barn manager and exercise rider, and that her employer now seeks to employ [the beneficiary] in the United States.

A manager and rider of show jumping horses acquires highly specialized knowledge of the horses in her owner's stable and of the very individual style of the championship rider. It is simply not possible to plug in any willing, able-bodied barn worker. The manager knows the particular strengths and follows a strict daily routine of feeding, care, exercise and maintenance to maximize each horse's ability. The manager also must adapt the horses to the personal techniques of the competition rider, by following that rider's training program in the rider's absence. He or she must accompany horses on trips to competition destinations in order to calm and assure horses, and to decrease the stress of travel.

Additionally, the manager must be able to provide both routine and emergency care, not only at home, but also at competitions and during travel to competitions, including bandaging, first aid and the administration of intravenous medications in an emergency. These are highly specialized skills developed only after years of practice and experience. It is an art form to mold a winning combination of horse and rider.

The petitioner also submits a list of international competitions at which the beneficiary has worked for the petitioner for the period January 2007 through May 2008, as well as a revised resume for the beneficiary in which she has added her experience as Barn Manager for [REDACTED] for the period April 2001 through October 2002.

Counsel asserts that [REDACTED] expert opinion, considered with the evidence already submitted, warrants a reversal of the director's decision and approval of the petition.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary possesses specialized knowledge or that she has been or would be employed in a capacity requiring specialized knowledge.

*The Standard for Specialized Knowledge*

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).<sup>1</sup>

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the principles of statutory interpretation do provide some guidance 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.

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

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<sup>1</sup> 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.

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 (3<sup>rd</sup> 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, 91<sup>st</sup> 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 establish by a preponderance of the evidence 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.

#### *Analysis*

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "specialized" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The decision of the director will be affirmed as it relates to this issue and the appeal will be dismissed.

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. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

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 or documented any basis to support this claim. The beneficiary has been and would be charged with the daily care of the petitioner's horses, including

riding, feeding, exercise, basic veterinary care, scheduling appointments, maintaining equipment and medication supplies, and managing travel arrangements by trailer and air. The petitioner has failed to specifically identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced horse trainers or barn managers employed in the petitioner's industry. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 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 failed to articulate, with specificity, the nature of the claimed specialized knowledge and how the beneficiary acquired such knowledge. Counsel indicates that the position requires an individual who is "intimately familiar with [REDACTED] proprietary equestrian technique and with her very spirited horses." Counsel has repeated this language times throughout the record, but neither counsel nor the petitioner has elaborated as to exactly what this "proprietary" technique involves. While it is evident that different riders have their own individual riding styles and preferences for the training of their animals, and horses have their own individual temperaments, the petitioner has not established how knowledge of [REDACTED] training routines and horses constitutes specialized knowledge. All horse trainers working at the higher levels of the equestrian sport are reasonably expected to acquire such familiarity with the animals and riders with whom they work. However, the petitioner has not differentiated its techniques or training methods from those of any other horse barn. Merely claiming that the beneficiary is familiar with internal or even "proprietary" techniques is insufficient if those standards are not materially different from those that are generally known and used by similarly experienced workers.

The AAO acknowledges the expert opinion letter from [REDACTED], which is submitted on appeal. Although [REDACTED] is well-credentialed in the beneficiary's equestrian field, his letter does not speak directly to the beneficiary's claimed specialized knowledge and how such knowledge qualifies her for the requested classification in light of the statutory and regulatory definitions, pertinent case law, and USCIS policy guidance, nor does he indicate that he is familiar with the requirements for L-1B classification. Rather, he speaks in general terms about the relationship between horse, rider and trainer/manager, thus lending support to the view that the type of knowledge possessed by the beneficiary is typical of trainers who work with competitive professional riders. [REDACTED] does not discuss with any specificity the beneficiary's specialized knowledge that is particular to the petitioning organization. He notes that "[t]he manager knows the particular strengths and weaknesses of each horse, and follows a strict daily routine of feeding, care, exercise and maintenance to maximize each horse's ability."

However, it is unclear why information regarding a particular horse's strengths and weaknesses and its strict daily routines could not be conveyed to a similarly experienced trainer who possesses general knowledge of the feeding, care, exercise and maintenance of championship-caliber show jumpers. While [REDACTED] validly states that "any willing, able-bodied barn worker" could not step into the role of a manager or trainer for top-caliber show horses and riders, it is also evident that the beneficiary's occupation is not that of a mere "barn worker" and therefore, comparisons to this occupation are not persuasive in supporting the petitioner's claim that the beneficiary possesses comparatively advanced and specialized knowledge. [REDACTED] also

indicates that trainers/managers must be able to provide routine and emergency veterinary care and describes these as "highly specialized skills"; however, such skills cannot be considered specific to the petitioning organization.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony.<sup>2</sup> *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

As explained above, the record does not distinguish the beneficiary's knowledge as specialized compared to horse trainers or managers employed elsewhere. The petitioner has failed to document any materially distinct qualities of the beneficiary's knowledge other than vague claims of a "proprietary technique" used by [REDACTED] or the individual personalities and temperaments of her horses. There is no indication that the beneficiary has any knowledge or training that exceeds that of any other similarly experienced horse trainer/manager. The petitioner indicates that the beneficiary began assisting [REDACTED] in international competitions immediately upon being hired as her barn manager and assistant rider in Germany. Further, the petitioner indicates that [REDACTED] was a student of Olympic riders [REDACTED] during the beneficiary's entire period of employment abroad, and it is reasonable to believe that she followed the [REDACTED] training regimen to some degree. The beneficiary gained her experience as the [REDACTED] barn manager prior to the formation of the petitioning company and such knowledge therefore is not specific to [REDACTED] company.

In sum, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of horse training, riding and maintenance is specialized compared to other similarly employed workers in the industry who have not worked with the petitioning organization. It is clear that the petitioner considers the beneficiary to be a skilled and important employee of the organization, and the AAO does not question the

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<sup>2</sup> Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); *see also id* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

beneficiary's qualifications for the position offered or the petitioner's preference to transfer her to the United States along with her horses. The AAO does not dispute the fact that the beneficiary's knowledge has allowed her to successfully perform her duties for the petitioner overseas. However, the successful completion of one's job duties does not distinguish the beneficiary as an employee possessing advanced knowledge of the petitioner's processes and procedures, nor does it establish employment in a specialized knowledge capacity with the foreign entity.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

### III. Qualifying Relationship

Beyond the decision of the director, a remaining issue to be discussed is whether the petitioner has established that a qualifying relationship exists between the petitioner and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(I).

The petitioner indicated on the Form I-129 that the beneficiary's foreign employer is [REDACTED] and that it is the parent company of the foreign entity abroad. In its letter dated December 2, 2008, the petitioner stated that "for the past two years, [REDACTED] has been based in Thedinghausen, Germany during the qualification period for the 2008 Olympics in Beijing." The petitioner stated that [REDACTED] plans to transfer a portion of the European operations to California, where she will train for the 2010 World Equestrian Games and 2012 Olympic Games.

In the request for evidence issued on December 12, 2008, the director requested that the petitioner submit additional evidence to establish that the U.S. and foreign entities have a qualifying relationship, including the foreign and U.S. companies' articles of organization.

In response, the petitioner submitted evidence that it was established as a California limited liability company on August 25, 2006 and maintains an active status in the State of California. With respect to the foreign operations, counsel stated that [REDACTED] "does business through her limited liability company" and "keeps some of her horses at the stables operated by [REDACTED] in Germany pursuant to contract." Counsel indicated that the beneficiary is the petitioner's only employee abroad and noted that "the employer does not have a separate corporate existence in the German Federal Republic."

The pertinent regulations at 8 C.F.R. § 214.2(I)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]
- (H) Doing business means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad;
- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Based on counsel's assertion that the petitioning organization "does not have a separate corporate existence in the German Federal Republic" it appears that the petitioner seeks to establish that it has a branch office in Germany. Probative evidence of a branch office would include the following: a business license or registration establishing that the U.S. company is authorized to conduct business as a foreign corporation in Germany, copies of German tax documents confirming the U.S. company's activities in Germany, or any other documentation establishing that the petitioning U.S. limited liability company is recognized as a legal

entity in Germany. The petitioner has not submitted this type of evidence, or comparable evidence that it is doing business as a legal entity in Germany.

Based on the evidence submitted, the petitioner claims to have a contractual arrangement whereby it boards some of its horses at the stables of [REDACTED]. The petitioner also indicates that this German company directly pays the beneficiary's salary and benefits, while the U.S. company claims to reimburse [REDACTED] for the beneficiary's services, thus suggesting that the petitioner does not directly employ anyone in Germany. The petitioner has not established that it operates a bona fide branch office in Germany.

Moreover, the petitioner must establish that it is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the beneficiary's stay in the United States. 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The petitioner seeks to transfer its sole claimed foreign employee and its horses to the United States by filing the instant petition. Upon completion of the transfer, the scope of the German operations would be limited to the boarding of some horses at the barn of [REDACTED]. Therefore, even if the petitioner had established that it currently operates a qualifying branch office in Germany, the petitioner has not established that the U.S. entity would continue to do business in Germany or any other foreign country for the duration of the beneficiary's stay in the United States. Therefore, the AAO must conclude that there is no qualifying organization abroad. For this additional reason, the petition cannot be approved.

#### **IV. Employment Abroad**

Another issue not addressed by the director is whether the petitioner submitted evidence that the beneficiary 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. 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner indicated that it has employed the beneficiary in Germany since January 2007. In response to the director's request for the beneficiary's payroll records with the foreign entity, the petitioner provided a letter from [REDACTED], who indicates that she hired the beneficiary in Germany, and notes that "[b]ecause it was necessary to employ such an individual with full insurance liability and health coverage, [the petitioner] reimbursed [REDACTED] monthly for the expense of [the beneficiary's] salary and benefits."

The petitioner indicated that it was providing "all receipts for payment." The petitioner attached what appears to be a German bank statement for an account owned by [REDACTED]. The document is not translated and reflects no apparent payments to the beneficiary or [REDACTED]. The petitioner did not provide the requested payroll evidence or comparable evidence, an explanation as to why it could not directly pay the beneficiary's salary, or sufficient evidence to support its claim that it has been paying the beneficiary's salary during her claimed period of employment in Germany. 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). Going on record without supporting 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

While the AAO does not doubt that the beneficiary has experience working with [REDACTED] during the time she was training in Germany, the petitioner has failed to submit requested corroborating evidence that it served as the beneficiary's employer abroad during the requisite time period. For this additional reason, the petition may not be approved.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## V. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. v. United States*, 229 F. Supp. at 1043, *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.

**ORDER:** The appeal is dismissed.