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

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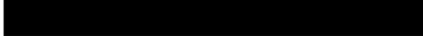


D-7

DATE: **SEP 06 2011**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE:           Petitioner:   
                  Beneficiary: 

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:      SELF-REPRESENTED

**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, Vermont Service Center, denied the nonimmigrant visa petition. 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 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 is self-described as a communications company. It claims to be the parent company of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary in the position of Product Management & Channel/Partner – Director for a period of four years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring 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, the petitioner asserts that the beneficiary "provides the company with a unique level of knowledge of the company's core technology and Intellectual Property which are critical to the performance of the position that he currently holds." The petitioner asserts that the beneficiary received nearly four years of technical training associated with the company's proprietary technologies, and has extensive experience in the company's core markets. In addition, the petitioner asserts that the beneficiary is considered a key contributor to the successful submission of invention patents that the company intends to file. The petitioner contends that the company will suffer significant setbacks if the beneficiary is unable to work in the United States.

## **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. Employment in a Specialized Knowledge Capacity**

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 March 3, 2009. The petitioner stated on the L Classification Supplement that the beneficiary's foreign employer is [REDACTED] located in Norwich, Norfolk, United Kingdom. The petitioner listed the beneficiary's dates of employment with this employer as "10/01/08 to Present." The petitioner indicated that the beneficiary's duties for the past three years included "General Management of business within Europe, and Asia." The petitioner stated that the beneficiary's proposed duties are "creation of Distribution & Partnership networks."

The petitioner submitted the Form I-129 with no supporting documentation or required initial evidence. Accordingly, the director issued a request for additional evidence ("RFE") on March 18, 2009. The director instructed the petitioner to submit, *inter alia*, the following: (1) a description of the beneficiary's typical workweek, including a discussion of the specialized nature of his position; (2) additional evidence to establish that the beneficiary's proposed duties in the United States require specialized knowledge; (3) evidence of the staffing of the U.S. company; (4) an explanation as to how the beneficiary's specialized knowledge will benefit the organization beyond what can be expected of other persons in the same profession; and (5) evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally

known by practitioners in the beneficiary's field of endeavor, or evidence that his advanced level of knowledge of the processes and procedures of the company distinguish him/her from those with only elementary or basic knowledge.

In response, the petitioner submitted an organizational chart for the U.S. company which identifies the beneficiary as "Director of Strategic Alliances & EMEA Sales." The petitioner identifies the beneficiary as a subcontractor who resides in England. The company has seven employees and one subcontractor residing in Massachusetts and Georgia.

In response to the director's request for additional information regarding the beneficiary's current and proposed job duties and qualifications as a specialized knowledge worker, the petitioner stated:

The typical work week would include 1-2 days working in the office (excluding weekends) preparing customer proposals, working with product engineering and customer service and participating in management meetings. He would average 8-11 hours a day in the office. The remaining days would be traveling to meet with our customers, technology partners and to provide training to the same parties.

Although the position may not be special in nature, his skill sets and previous experience with the former CBL Systems provides a critical element to the company's near term success. [The beneficiary] is very familiar with the proprietary technology of the products, and represents a history with customers and partners that is vital to our company's success. Additionally, [the beneficiary] is a member of the company's management team and is a shareholder of the company. Furthermore, [the beneficiary] has previously worked for the company CEO in which his performance was rated as a top 1% out of 125 employees.

Additionally, [the beneficiary] is working with our engineering organization on unique Intellectual Property that the company will be fining [*sic*] with the U.S. Patent Office over the next 3-24 months in which [the beneficiary] is likely to be named as one of the inventors.

The petitioner also provided the following description of the beneficiary's duties:

**Technology Partnership Program**

- Devise, refine and implement strategy
- Devise program details in accordance with all internal/external interest groups & stakeholders
- Value Proposition – tailor to needs of individual Partners
- Contact & Negotiate with Leads in Partner Companies
- Negotiate partner benefits including Q point program and rebates
- Devise and implement partner training program
- Run program on day to day basis
- Evolve strategy/implementation over time
- Product development with company engineers working on IP for patent submission

### **Distributor Program**

- Devise, refine and implement strategy
- Devise program details in accordance with internal/external interest groups & stakeholders
- Value proposition – tailor to individual needs of Distributors
- Contact and negotiate with Technical/Marketing leads for individual Distributors
- Implement pricing strategy for National and Regional Distributors
- Co-ordinate Distributor and Man. Rep. groups
- Devise and negotiate individual Terms and conditions for each distributor
- Devise and implement training schedules.
- Run program on a day to day basis
- Evolve strategy and its implementation over time.

### **Sales & Marketing**

- Run all elements of International sales and marketing efforts: contacting customers, pricing, quotes, queries, returns, deliveries, follow ups, International based distributors, international VARs, etc
- Co-ordinate and manage all elements of LON sales globally: in particular control of End of Life program, price increases, allocation planning etc.
- Help support internal and external staff for National (USA) sales and marketing of IQ products.
- Forecasting
- Handle day to day incoming enquiries
- Proactive and outgoing sales and marketing initiatives.
- Support International opportunities from Trade shows and incoming enquiries

### **Management**

- Management meetings to discuss overall company strategy, pricing policies, technology advancement, future product planning etc.
- Creativity and ideas for development, contribute to all company programs by bringing international perspective to an otherwise all US citizen based company
- Support and (International) guidance for CEO and other Board members.

In response to the director's request for information regarding the type of business conducted by the foreign entity, the petitioner submitted company information from its U.S. web site. According to the company overview provided, the petitioner offers the "Intelligent Quasar technology platform" which provides Ethernet switch technology for the IP-based physical security network market and for the IT marketplace.

The petitioner also submitted a press release announcing the company's acquisition of the assets of CBL Systems LLC, formerly based in Massachusetts. The announcement indicates that the petitioner bought CBL's Ethernet Switch Technology and product lines and the CBL Local Optical Network (LON) product line, to be marketed under the petitioner's name.

The RFE included requests for evidence that the U.S. and foreign entities are qualifying organizations, documentary evidence of the foreign entity's business activities for the past year, a detailed description and

documentation of the type of business conducted by the foreign entity, and photographs of the interior and exterior of the foreign entity which depict the operation of the business. The AAO notes that all evidence submitted in response to these requests pertained to the U.S. entity. As will be discussed further below, the petitioner has established the existence of a qualifying organization abroad.

The director denied the petition on June 26, 2009, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a specialized knowledge capacity. The director noted that the petitioner did not clearly document how the beneficiary's knowledge of the processes and procedures of the organization is substantially different from, or advanced in relation to, any similarly employed worker in the industry.

On appeal, the petitioner asserts that the beneficiary is working for the petitioner in the capacity of Vice President of Sales and Strategic Alliances and is the second highest ranking employee in the company. The petitioner further states:

[The beneficiary] provides the company with a unique level of knowledge of the company's core technology and Intellectual Property which are critical to the performance of the position that he currently holds. [The beneficiary] has received just under four years of technology training associated with the company's propriety [*sic*] technologies and has extensive experience in the core markets that [the petitioner] currently serves and the broader markets that the company is expanding into. Please note that the company has recently submitted a provisional patent to the U.S. Patent Office with subsequent information being provided to include naming [the beneficiary] as one of the two inventors. [The beneficiary] is considered a key contributor to the successful submission of additional inventions that the company intends to file with the U.S. Patent Office by the end of this calendar year. [The beneficiary] is a member of the company's executive committee, a shareholder of the company and considered an asset to potential investors to the company.

The petitioner states that the beneficiary's unique knowledge of the company's "new technology" and applicability of the technology in broader markets makes him invaluable to the company and critical to its expansion. The petitioner indicates that it would take 15 to 24 months to training a less qualified person to replace the beneficiary, at the risk of substantial company losses. The petitioner emphasizes that the beneficiary's sales of LON products account for approximately 70% of the company's revenues.

With respect to the beneficiary's qualifications, the petitioner notes:

[The beneficiary's] resume includes 20 years of frontline experience in Data and IT networking, 12 years of experience in Optical networking and 4 years working specifically with [company] clients and markets. He is only one of three sales oriented employees in the company and has the most knowledge of the Ethernet products and the only employee with any experience in [the company's] international market and is the leading authority with the company's LON products. He was trained extensively over a 4 year period with British Telecom in Mobile (Cell), Data and voice communications, which required passing 3 different Boards for these disciplines. He was also fully trained by ADC Telecommunications in data and fiber communication networks and

optical networking. [The beneficiary] is expected to generate over \$1.4 million in venues over the next 12 months.

The petitioner re-submits the beneficiary's job description and evidence of revenues generated by his sales of LON products in support of the appeal.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary possesses specialized knowledge or that he 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 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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<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.

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 (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 petitioner claimed that the beneficiary's "skill sets and previous experience with the former CBL Systems" is critical and stated that he is "familiar with the proprietary technology of the products," has a history with the company's customers and partners, and has worked with the company's engineering organization on patented intellectual property. While the petitioner offered a detailed description of the beneficiary's proposed duties, it offered little explanation as to what constitutes the beneficiary's specialized knowledge, how or when he gained such knowledge, or how the knowledge would be applied in the proposed position. 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 submitted secondary evidence of its acquisition of the assets of the U.S. company CBL Systems, LLC and implied that the beneficiary has experience with "the former CBL Systems." However, the petitioner did not provide the beneficiary's resume, training history, employment records, or any other evidence to corroborate its statements. The petitioner's statements on appeal are similarly unsupported by any evidence. For example, the petitioner indicates that the beneficiary's resume includes "4 years working with [the petitioner's] clients and markets" and "just under four years of technology training associated with the company's proprietary technologies," but the petitioner submits no corroborating evidence in support of the appeal. The petitioner indicates that it was established in 2008, and, as discussed further below, it has not provided evidence that it has an affiliate, subsidiary or branch outside the United States. Again, it is unclear exactly when or how the beneficiary gained his claimed specialized knowledge of the petitioner's products, clients, and markets. 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)).

Even if the petitioner had documented the beneficiary's training in proprietary company products and work experience with a qualifying entity abroad, a claim that the beneficiary possesses proprietary knowledge will not meet the petitioner's burden of proof. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by claiming that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification. Here, other than claiming that the petitioner's products are "proprietary" the petitioner has offered no information or evidence that would differentiate them from any similar products available in the petitioner's industry. As such, the AAO cannot conclude that the knowledge required to

develop partnership and distributorship networks for such products, and to sell such products, is significantly different from that possessed by similarly employed workers in the industry. The petitioner's failure to document the beneficiary's claimed training in any proprietary products or claimed contribution to the development of new technology, considered in light of the petitioner's failure to differentiate its products from those generally available in the industry, prohibits a finding that any knowledge of the petitioner's products is specialized, or that the beneficiary's own knowledge is advanced.

Similarly, while the petitioner indicates that the beneficiary possesses knowledge of international markets not possessed by any of its U.S. employees, the petitioner does not further describe exactly what this knowledge entails or how familiarity with a particular market constitutes specialized knowledge, rather than general knowledge commonly found in the petitioner's industry among companies with an international client base.

Overall, the evidence submitted does not establish exactly what constitutes the beneficiary's knowledge or establish how or when the beneficiary obtained that knowledge. Moreover, the petitioner did not establish that knowledge or familiarity with the petitioner's products and international markets constitutes specialized knowledge or that this knowledge is so complex that it could not be readily transferred to similarly trained and experienced employees from outside the petitioning organization.

To establish eligibility in this proceeding, the petitioner may alternatively establish that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes and procedures and that the position requires such knowledge. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D).

In this regard, the petitioner claims that the beneficiary is a high-ranking executive in the company, is a shareholder and member of the company's executive committee, has contributed to the development of at least one patented product, has four years of training "associated with" the petitioner's proprietary technologies, and has extensive experience in the petitioner's core markets. Again, the petitioner has not explained in what specific capacities the beneficiary has worked and states on the Form I-129 that he has been employed by the organization only since October 2008. The petitioner's claims are otherwise unsupported by any corroborating evidence pertaining to the beneficiary's ownership of the company, patents, or company-specific training.

The petitioner further asserts that the beneficiary's knowledge of Ethernet products, sales, international markets, and the LON product line exceeds that of most or all other company employees, but once again, provides no explanation as to how the beneficiary acquired this purportedly advanced knowledge, or how such knowledge came to reside almost exclusively with the beneficiary, who is listed on the petitioner's organizational chart as a subcontractor. Again, 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 petitioner undoubtedly considers the beneficiary to be a valuable, even critical, employee, it has not met its burden to articulate and document how the beneficiary's knowledge qualifies as specialized or advanced or that the proffered position requires "specialized knowledge" as defined in the regulations and the Act.

Overall, the petitioner's claims that the beneficiary possesses specialized knowledge and that he has been and would be employed in a capacity requiring specialized knowledge fail on an evidentiary basis. Accordingly, the appeal will be dismissed.

**III. Qualifying Organization Abroad**

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign 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(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" 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 (l)(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[.]

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(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.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The petitioner indicated on Form I-129 that it is the parent company of [REDACTED] located in the United Kingdom. The petitioner did not complete the portion of the Form I-129 where it is asked to describe the stock ownership and managerial control of each company.

In the RFE issued on March 18, 2009, the director requested evidence that the U.S. and foreign entities are qualifying organizations. The director specifically requested evidence of the foreign entity's business activities for the past year by submitting documents such as copies of purchase contracts, purchase orders, invoices or other documentary evidence. The director further requested that the petitioner describe in detail the type of business the foreign entity conducts, supported by corroborating documentation. The director also requested photographs of the foreign entity which show the interior and exterior of its business premises and clearly depict the organization and operation of the business.

In response to the director's request that the petitioner submit evidence that the United States and foreign entities are qualifying organizations, the petitioner submitted the "Annual Minutes Requirement Statement of the Directors and Shareholders" the petitioner filed with the State of Georgia in April 2009. The document indicates that the company was incorporated on September 15, 2008 and is owned by [REDACTED] (3.2 million shares), [REDACTED] (140,625 shares), [REDACTED] (187,500 shares) and [REDACTED] (46,875 shares). The petitioner did not submit any evidence relating to the ownership of the beneficiary's claimed foreign employer.

In response to the directors request that the petitioner submit evidence that the foreign organization is engaged in the regular, systematic and continuous provision of goods and services, the petitioner attached the U.S. company's sales report as of April 30, 2009. As evidence of the foreign entity's business activities for the past year, the petitioner submitted a purchase order from a British company, indicating its purchase of approximately \$40,000 in products from the U.S. petitioner in April 2009.

In response to the director's request for an explanation of the type of business operated by the foreign entity, the petitioner submitted a company overview and press release from the U.S. company's web site and an excerpt from the petitioner's Confidential Investment Memorandum. According to the memorandum, the petitioner "employs direct sales resources in the U.S. and Europe." There is no mention in any company materials of the existence of a foreign branch, affiliate, subsidiary or parent. The company's press release

indicates the petitioner's acquisition of the assets of a U.S. company, but does not indicate that any foreign affiliates or subsidiaries were included in the asset acquisition.

Based on the foregoing, the petitioner has failed to submit evidence to establish the existence and ongoing operation of a foreign branch, subsidiary, affiliate or parent company.

The AAO notes that, on the Form I-129, the petitioner provided the same United Kingdom address for both the beneficiary's foreign address and the foreign employer's address. The petitioner also indicates that it currently employs the beneficiary as a subcontractor in England, and acknowledges that it directly employs sales resources in Europe. This evidence suggests that the petitioner may directly employ or subcontract the beneficiary in England, perhaps as its sole foreign employee. The petitioner has not established that it is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States as an intracompany transferee. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). For this additional reason, the petition cannot be approved.

#### **IV. The Beneficiary's Period of Employment with a Qualifying Organization Abroad**

The remaining issue in this case is whether the petitioner submitted 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. 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner indicates that the beneficiary has been employed by [REDACTED] in the United Kingdom since October 2008. The petition was filed on March 3, 2009. Based on the information the petitioner provided, the beneficiary has not accrued one continuous year of full-time employment with the petitioning organization. Furthermore, as discussed above, the petitioner has not established the existence of a qualifying organization abroad.

The AAO acknowledges the petitioner's reference to the beneficiary's association with [REDACTED] however, the record contains little information regarding the petitioner's acquisition of this company, and does not indicate whether the acquisition included acquisition of a related foreign entity. The petitioner has provided no employment history, resume, or employment records identifying the beneficiary's employer during the relevant three-year period preceding the filing of the petition. Accordingly, the evidence of record does not satisfy the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(ii) and the petition must be denied for this additional reason.

#### **V. Conclusion**

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 2d 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.