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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

DATE: JUN 04 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [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)

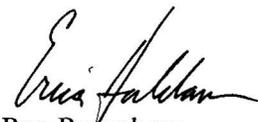
ON BEHALF OF PETITIONER:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


p-Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, is a software design and development company and claims to be a wholly-owned subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as an associate project manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a specialized knowledge capacity or that the beneficiary will be employed in a position requiring specialized knowledge in the United States.

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 for the petitioner contends that evidence submitted in support of the petition was either misconstrued or overlooked by the director, and states that the petitioner has established that the beneficiary is qualified for the classification sought.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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.

The regulation at 8 C.F.R. § 214.2(l)(3) 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.

II. The Issues on Appeal

The issues to be addressed are whether the petitioner established that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The petitioner claims to be engaged in software design and development. On the Form I-129 petition, the petitioner states that it was established in 2010 and currently has no employees. Although it states that its parent company has a gross annual income of \$739,000, there is no reported revenue for the U.S. petitioner. The petitioner further claims on the L Supplement to the Form I-129 petition that the beneficiary is not coming to the United States to open a new office. Regarding its business, the petitioner stated in a letter of support appended to the petition that it was established in order to further the foreign parent's global outreach, claiming that it expands on the foreign entity's relationships with existing clients.

The foreign entity also submitted a letter in support of the petition, in which it explained in greater detail the nature of its business operations. Specifically, the foreign entity stated that it is "a technology design house creating technologies and products which will hone the applications and services of the future." It further stated:

[The foreign entity] is proud to be among very few companies in the world with strengths in both Embedded System Design and Real Time Computer Vision and Imagery Solutions. Strong associations with premier technical institutes like the [redacted] through its professors helps us bridge the gap between academic research and commercially successful technology products.

[The foreign entity] provide[s] product design services in the Embedded Space. Our expertise lies in System Architectural design & development right from requirements stage to market ready products. We have an impressive portfolio of product designs using FPGAs; [8 bit] to 32 bit microprocessors; bus architectures like SPI, I2C, CAN, PCI, [etc.]; and Embedded Operating Systems like Linux, VxWorks, ThreadX, etc. [The foreign entity's] domain expertise extends to network routers, modems, telecom protocol firmware, cameras, etc.

We also specialize in real-time video processing solutions for on-line applications along with our off-line video and image analysis solutions. This involves selection of Imaging Sensors, Cameras and Image Digitization Circuitry, Lighting, Placement, Mounting and the right processing platform for the Software Development and Integration with other Electronic or Electro-Mechanical Systems.

Regarding the beneficiary's employment abroad, the foreign entity stated that the beneficiary has been its employee since September 2005. Specifically, it claimed that the beneficiary was a software analyst from September 2005 to December 2005; a design engineer from January 2006 to June 2007; and a senior design engineer from July 2007 to June 2010. Most recently, the foreign entity stated that he was promoted to lead design engineer L1 and has been working in this capacity since July 2010.

The foreign entity went on to explain that the beneficiary was recruited as a specialized resource in the Computer Vision (CV) domain, and claimed that he received specific training in this domain, namely:

1. Introduction to Computer Vision
2. Image / signal processing basics
3. Feature detection / tracking
4. Introduction to multimedia and compression basics and their applications
5. 3 view / N view geometry, Vision 3D Reconstruction volumetric approach

Additionally, it explained that the CV group uses a common and proprietary framework called [REDACTED] for performing the tasks of image / video acquisition and processing. The foreign entity further stated that this proprietary framework was created by its employees, and that the beneficiary was among the founding members of the [REDACTED] library. Specifically, the foreign entity stated that it employs 46 individuals, 6 of which are in the CV group. Moreover, the petitioner stated that only 4 of those 6 employees, were involved in the development of [REDACTED] and that the beneficiary is one of those 4 employees. As a result of being one of the key resources on this framework, the foreign entity claimed that the beneficiary has thorough knowledge of the library. It further claimed that over the past five years, the beneficiary has used [REDACTED] in several projects and, during the course of these projects, actively contributed to the existing framework by adding more advanced capabilities to it.

The foreign entity also provided a list of tasks and duties performed by the beneficiary in his various roles since the beginning of his employment in 2005. The petitioner provided the following duty description for the beneficiary's current role as Lead Design Engineer L1:

- Managing and planning projects for existing clients. Developing project plans, project schedules, Requirement Gathering and Analysis (10%).
- Leading offshore team and identifying open issues early on and addressing them successfully to achieve timely milestone execution. Interacting with clients at every stage of the project to obtain input and feedback (10%).
- Design and Development of following modules using [REDACTED] proprietary framework as base framework (50%). This duty includes utilization of:
 - a. Auto focus techniques for two different lenses
 - b. Image statistics data collection and management module.
 - c. Auto Focus Interface module.
- Module level testing of User interface and Lens control module using predefined test cases developed for project using [REDACTED] framework. 15%
- Configuring [REDACTED] proprietary framework as per project requirements – 10%
- Maintenance of [REDACTED] proprietary framework. – 5%

The foreign entity concluded by stating that the beneficiary's knowledge is non-transferrable and uncommon due to its proprietary nature. It further stated that it would take at least 18 months of on-the-job training and experience, in addition to "usual industry requirements," for a new employee to gain knowledge comparable to the beneficiary's.

Regarding the beneficiary's proposed employment in the United States, the petitioner stated that "the client in the United States requires [the petitioner] to develop Auto Focus capabilities for a highly advanced camera platform." It further stated that the petitioner is proposing "to configure the [REDACTED] framework for their hardware and use it for developing the Auto Focus capabilities and integrate Object tracking facilities." The petitioner stated that it requires the beneficiary's services as assistant project manager and described his proposed duties as follows:

1. Managing and planning projects for existing client. Developing project plans, project schedules, Requirement Gathering and Analysis (10%)
2. Leading onsite team in identifying issues early on and addressing them successfully to achieve timely milestone execution. Interacting with client at every stage of the project to obtain input and feedback to offshore team (10%).
3. Integration of [the petitioner's] proprietary Auto focus and Object Tracking library of [redacted] proprietary framework with project specific Auto Focus Interface module which has been developed by beneficiary (30%).
4. Development, Performance, and integration testing of following modules which are based on [redacted] proprietary framework with a focus on (40%):
 - a. Lens control Module
 - b. Image statistics data collection and management module.
 - c. Auto Focus User Interface module.
5. Configuring [redacted] proprietary framework as per project requirements – 10%

The petitioner concluded by stating that the beneficiary's knowledge of the [redacted] framework was essential to the proposed client project in the United States, and further claimed that no other employee is able to perform the duties outlined above. The petitioner further noted that it is "just starting to set up" its offices in the United States and, therefore, will require the beneficiary to train new employees in the CV area, which the petitioner claimed would take approximately 10 months.

The director found the initial evidence insufficient to establish eligibility, and consequently issued a request for evidence ("RFE"). The director instructed the petitioner to submit, *inter alia*, an organizational chart for the U.S. entity, as well as a more detailed description of the specialized knowledge involved in the beneficiary's position abroad and in the United States, clearly identifying how the beneficiary's knowledge of the company's equipment, system, product, technique, or service is "special" and will be applied to the international market, or an explanation of how the beneficiary's knowledge is of an "advanced" level.

In its response to the RFE, the petitioner, through counsel, addressed the director's queries. Counsel repeated much of the same information regarding the beneficiary's past duties, current duties, and statements pertaining to the beneficiary's proprietary knowledge of the [redacted] framework and the length of time (18 months) it would take to train others in this field. Many of the statements and duties submitted are identical to those provided in the initial letter of support appended to the petition. Regarding the beneficiary's role in the United States operation, counsel emphasized that the beneficiary would not be in the United States to open a new office, but rather would be working on a specific project for the petitioner's client, [redacted]. Counsel submitted a list of training courses the beneficiary completed during the course of his employment with the foreign entity as well as other previously-submitted documents. The petitioner also provided a copy of commercial proposal made by the foreign entity to [redacted] for the project titled "Enhancements to [redacted]" which was signed by both parties in April 2009.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary's employment abroad was in a specialized knowledge capacity, or that the beneficiary would be employed in the United States in a specialized knowledge capacity.

On appeal, counsel incorporates all previously submitted statements provided by the foreign entity and the petitioner into her brief and asserts that such statements provide ample evidence supporting the approval of the petition. Counsel contends that the director erred by disregarding the voluminous evidence submitted which clearly demonstrated the nature of the beneficiary's specialized knowledge and the extent to which the proffered position required specialized knowledge.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge position.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

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(1)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The petitioner 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 for this claim. The petitioner contends that the beneficiary possesses specialized knowledge of the petitioner's proprietary [REDACTED] framework, which the beneficiary also helped develop; however, the record is devoid of any evidence outlining the nature of this framework or documenting its existence. For example, the petitioner submits into the record a copy of its company profile, which outlines the nature of its business and the services it provides. However, there is no discussion or mention of the [REDACTED] framework, which is the framework claimed to be critical to the beneficiary's proposed project in the United States and the core of his specialized knowledge. Absent additional documentation regarding the exact nature and specifications of this framework, the AAO finds the evidence insufficient to establish that the beneficiary possesses a special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced project leaders employed in the foreign entity or the petitioner's industry.

Merely stating that the beneficiary is one of four employees with specific knowledge of this framework, without evidence of the framework's existence is insufficient to establish specialized knowledge. 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).

Therefore, the petitioner's general statement that the beneficiary possesses specialized and proprietary knowledge, without more, does little to clarify how the beneficiary's employment and training abroad is differentiated from any other employee of the petitioner. Merely claiming that the beneficiary has unique knowledge of internal products, services, procedures and methodologies is

insufficient if the knowledge is not materially different from what is generally known and used by similarly experienced workers within the petitioner's company, or within the industry.

Moreover, in the RFE, the director specifically advised the petitioner that if it is claiming that the beneficiary possesses proprietary knowledge, it should provide a detailed comparison of the petitioner's system, product, techniques, processes or procedure to those produced or used by others in the industry, and provide evidence of the beneficiary's work to support any claim that he was involved in the design or development of the company's tools, services, processes or procedures. None of the documentary evidence submitted by the petitioner in response to the RFE referenced [REDACTED] or his role in the development of [REDACTED] despite the petitioner's reassertion of its claim that the beneficiary contributed to the development of the framework. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner did submit copies of two published articles in which the beneficiary and his co-workers at the foreign entity were co-authors. However, the only explanation that accompanied the articles was counsel's broad statement that "This demonstrates his specialized knowledge." Neither article specifically references [REDACTED] and the petitioner did not specifically claim or attempt to explain how the beneficiary's contributions to these published articles demonstrates his development of a proprietary framework for the petitioner.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. The petitioner must still establish that the beneficiary's knowledge is either special or advanced. The petitioner's claim that the beneficiary's proprietary knowledge of the [REDACTED] framework fails on an evidentiary basis.

Moreover, the petitioner focuses its discussion of the beneficiary's proposed employment in the United States on the integration of the [REDACTED] framework for the petitioner's client, [REDACTED]. However, the limited corroborating evidence provided for this project is a commercial proposal indicating that the foreign entity proposed a project to enhance the client's auto focus system. The petitioner did not include a copy of the project's technical proposal, which is referenced in the commercial proposal, and there is no indication in the submitted document that the client specifically contracted for the petitioner to provide services that require specialized knowledge of the company's [REDACTED] framework. There are no technical details discussed in the commercial proposal. Instead, the petitioner simply asserts that the beneficiary's presence in the United States is required so that he will be able to "study the hardware and deploy the framework (either derived from or based on [REDACTED] on to the hardware and then finally test it." The petitioner also asserts that he will be required to manage the U.S. team, yet the record at the time of filing demonstrates that the petitioner has no employees on staff. Contrary to the petitioner's specific claims in the record, it appears that

the beneficiary's main duties will be to act as liaison between the petitioner's "offshore" employees and the client. Again, the petitioner presents no evidence and makes no connection between the [REDACTED] framework and the needs of the client. 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)).

Overall, the evidence submitted does not establish that knowledge of the petitioner's [REDACTED] framework 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. For example, the petitioner provides no detail regarding the duration of the training it provides its employees, nor does the record contain information such as a syllabus or other document outlining the actual training provided and the method(s) in which it is offered. The petitioner's claim that it has developed the proprietary [REDACTED] framework, and its simultaneous claim that it only selectively provides training on this framework to an exclusive group of individuals contradicts the very nature of the petitioner's claimed business dealings. Absent evidence demonstrating the nature of the [REDACTED] framework and the training provided to its personnel on this framework, it is unclear why other employees of the petitioner, or a similarly-degreed and experienced individual within the petitioner's industry, could not also gain this same level of knowledge.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. While the position of assistant/associate project manager may require a comprehensive knowledge of the [REDACTED] framework, the petitioner has not established that this position requires "specialized knowledge" as defined in the regulations and the Act. 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.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Due to the petitioner's failure to document its primary claim that the beneficiary's knowledge of the [REDACTED] framework constitutes specialized knowledge, it has not met its burden. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

While not directly addressed by the director, the AAO notes that the submitted commercial proposal between the petitioning organization and its U.S. client raises questions as to whether the conditions

of the L-1 Visa Reform Act apply to this matter. The provisions of section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), provide:

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

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

On the L Classification Supplement to Form I-129, the petitioner marked "No" where asked to indicate whether the beneficiary will be stationed primarily offsite. However, the petitioner has indicated that the beneficiary will be working on a client project for [REDACTED]. The only documentation provided that relates to the agreement with the client indicates that the petitioning organization has agreed to place one employee on-site in connection with the project, and indicates that [REDACTED] is required to provide "office facilities, access, infrastructure, sitting arrangements, office utilities like phone, fax, e-mail, hardware, software, related documents, etc. to the on-site project team." While the petitioner has submitted evidence that it signed a lease for an office with a one-person capacity, the terms of the petitioner's agreement with its client appear to require the beneficiary, as the sole U.S. employee assigned to this project, to work at the client's site. Without further explanation of this apparent discrepancy, the AAO cannot determine whether the L-1 Visa Reform Act applies or whether the petitioner has met the requirements of the L-1 Visa Reform Act.

Finally, the evidence is not persuasive that a qualifying relationship exists between the petitioner and a foreign entity as required by 8 C.F.R. § 214.2(i)(1)(ii)(G). The petitioner repeatedly asserts that it is a wholly owned subsidiary of the foreign entity. In support of this contention, the petitioner submits a copy of a stock certificate bearing the number 1 and demonstrating that the foreign entity owns 2,500 shares of the petitioner's stock. This document alone, however, does not establish a qualifying relationship between the two entities.

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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362

(Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In this matter, the only other relevant document submitted is the petitioner's articles of incorporation, which demonstrate that the petitioner is authorized to issue 1,000,000 shares of common stock.¹ Absent the stock ledger or minutes of relevant shareholder meetings, the single stock certificate submitted by the petitioner is insufficient to establish that the foreign entity is the sole or majority owner of the petitioner. For this additional reason, the petition must be denied.

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 reviews appeals on a *de novo* basis).

IV. Conclusion

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.

¹ The AAO also notes the inclusion of a bank statement evidence a wire transfer in the amount of \$25,000 to the petitioner from the foreign entity as evidence of the payment of the 2,500 shares of stock issued. However, while this transaction confirms that the shares of stock were in fact purchased by the foreign entity, it does not establish that there are no additional, undisclosed shareholders that own an interest in the petitioning entity.