



U.S. Citizenship
and Immigration
Services

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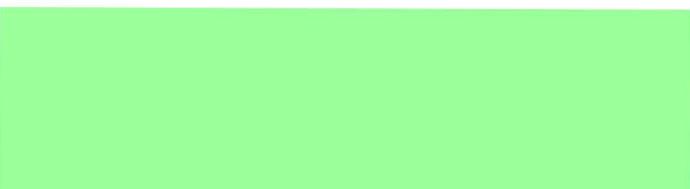


DATE: **MAR 18 2013** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 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 is a business information technology consulting firm. It claims to be a branch office of [REDACTED] located in India. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a Performance Analyst, for an initial period of three years. The petitioner indicates that the beneficiary will be stationed primarily offsite at the Shoreview, Minnesota worksite of its client, [REDACTED] (hereinafter "the unaffiliated employer.")

The director denied the petition, concluding that the petitioner failed to establish that the placement of the beneficiary is not an arrangement to provide labor for hire in violation of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the evidence of record is sufficient to establish that the placement of the beneficiary at the unaffiliated employer's worksite is not an arrangement to provide labor for hire.

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.

Section 412 of the L-1 Visa Reform Act of 2004 states the following:

- (F) 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 to the petitioning employer is necessary.

Finally, 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 Issue on Appeal

A. L-1 Visa Reform Act

The sole issue addressed by the director is whether the petitioner established that the placement of the beneficiary at the unaffiliated employer's worksite is not an arrangement to provide labor for hire in violation of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act.

The petitioner is a business information technology consulting firm. The petitioner's group had a consolidated gross annual income of \$6 billion in the year prior to filing with over 142,000 employees worldwide in 50 countries.

The petitioner stated that the beneficiary would be working as a Performance Analyst. On the L Classification Supplement to the Form I-129, the petitioner answered "yes" to Section 1 Question 13, indicating that the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer. The petitioner provided the worksite address of the unaffiliated employer as the address where the beneficiary will work on Part 5, Question 5 of the Form I-129. The petitioner responded to Question 13 by stating that the [REDACTED] will supervise and control the beneficiary's work. The petitioner further described how the manager will assign tasks on a day-to-day basis and supervise the beneficiary by various means of communication. According to the petitioner, the Delivery Manager would also be responsible for conducting semi-annual appraisals of the beneficiary.

In a separate letter, the petitioner described how the unaffiliated employer was working towards consolidating "its e-commerce solutions for small business customers as part of the Shop Deluxe project." The petitioner stated that the beneficiary's position with respect to this project is as follows:

[T]he Beneficiary will be responsible for utilizing [the petitioner's] proprietary technologies and methodologies to provide performance engineering services on the client's manufacturing and mainframe applications which are being migrated and consolidated on the new platform.

The petitioner then provided the beneficiary's three main job duties with respect to the project, a description of the technology to be used in the performance of each, and how that technology involved the beneficiary's specialized knowledge. The petitioner stated that the beneficiary will be "controlled and supervised principally by his . . . Delivery Manager, [REDACTED]. The petitioner gave the same description of the nature of the supervision as provided on the Form I-129, Question 13.

The petitioner provided a copy of the Master Services Agreement ("MSA"), an Amended and Restated MSA, and a copy of an invoice for services provided to the unaffiliated employer. The MSA states that the unaffiliated employer "desires" to obtain IT services and related work and that the petitioner is willing to provide those services to the unaffiliated employer pursuant to the terms and conditions of the MSA. The MSA did not provide any further detail regarding the nature of the services. The Amended and Restated

MSA, dated December 23, 2005, over 11 months after, does not provide any additional description of the contracted services.

The petitioner also provided an invoice for services addressed to the unaffiliated employer. The invoices were for the project entitled "Deluxe DSS, WAA, SOA & Other Support Services - Offshore." An attached annex detailed the cost center numbers, cost center/project names, and amount billed for items described as "Time & Material Projects." The items were identified by "cost center numbers" and "cost center/project names."

The director issued a Request for Evidence ("RFE"), advising the petitioner that it provided insufficient evidence concerning the location where the beneficiary will work, the product or service to which the beneficiary will be providing specialized knowledge, and the conditions of employment. The director requested that the petitioner provide, *inter alia*, evidence to establish: (1) that the beneficiary will be controlled and supervised principally by the petitioner; (2) the location where the beneficiary will work; and (3) that the placement of the beneficiary at the client's worksite is not merely to provide labor for hire. Specifically, the director stated that the evidence could include: (1) a more detailed explanation of the contracted for services to be provided to the unaffiliated employer; (2) proof that the unaffiliated employer received the products or services; (3) updated contracts, statements of work, work orders, or service agreements between the petitioner and the unaffiliated employer; and (4) copies of press released that discuss the product or service to be provided to the unaffiliated employer by the petitioner.

In response, the petitioner provided (1) the "Onsite Supervisor's January 2011 Paystubs and 2010 W-2 Form"; (2) the same Amended and Restated MSA submitted with the initial petition; and (3) the onsite organizational chart for the unaffiliated employer's work location.

The director ultimately denied the petition finding that the petitioner failed to establish that beneficiary's placement at the unaffiliated employer's worksite is in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, as required by section 214(a)(F)(ii) of the L-1 Visa Reform Act. The director noted that the petitioner's claimed proprietary project management methodologies, tools and processes appear to be similar to those developed and used by other companies in the IT consulting field. Furthermore, director concluded that the specialized knowledge that the beneficiary possesses appears to be only "tangentially related to the performance of the proposed offsite activity" due to the fact that his knowledge relates to development, testing, and maintenance of the unaffiliated employer's products rather than the petitioner's own software, firmware or hardware products.

On appeal, counsel for the petitioner contends that the director's decision was based on a misapplication of law and that the director did not consider all the facts in evidence. Specifically, counsel contends that the director's conclusion regarding labor for hire is erroneous as follows:

[T]he Service erroneously concludes that the arrangement between the client and the Petitioner is "labor for hire" because the service could not be unique since competitors offer similar services. This conclusion is without support and essentially renders ineligible the

entire L-1 specialized knowledge, intracompany transferee category for any organization that has the misfortune of having competitors that provide similar products or services.

Counsel for the petitioner further contends that the director incorrectly concluded that the beneficiary's specialized knowledge is "tangentially related to the performance of the proposed offsite activity." Counsel claims that the petitioner "detailed in its earlier submission" that it "cannot execute its project without the use of its specialized methodologies and tools" and that this knowledge is what qualifies the beneficiary as a specialized knowledge professional.

Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the placement of the beneficiary at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act.

However, upon review of the director's decision, the AAO finds that the reasons given for the denial are conclusory and provide little specific discussion of the evidence entered into the record. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, the AAO will fully address the petitioner's evidence herein.

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

If the petitioner fails to establish either of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

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.

1. Supervision and Control

Upon review, the petitioner has failed to consistently and credibly document who would be supervising and controlling the beneficiary's work. The petitioner initially stated that the beneficiary's work would be supervised and controlled by its Delivery Manager, [REDACTED]. The petitioner asserted this on the Form I-129 as well as in the letter submitted with the initial petition, and the director acknowledged the petitioner's assertions without making an adverse finding with respect to the first prong of the L-1 Visa Reform Act.

However, in response to the RFE, the petitioner submitted an organizational chart showing that the beneficiary's work will be supervised and controlled by [REDACTED] Project Manager, and provided evidence of wages it paid to this employee. On the organizational chart, [REDACTED] is depicted as one of 13 employees reporting to a "Project Lead – Deluxe Financial Services" who, in turn, reports to [REDACTED]. Notably, there is no "delivery manager" identified on the chart. On appeal, counsel for the petitioner reasserts that the beneficiary will be supervised and controlled by the onsite Project Manager, [REDACTED].

The change in both job title and name of the individual claimed to be the beneficiary's supervisor calls into question the validity of the petitioner's claim. Furthermore, the petitioner failed to provide an explanation for the inconsistencies regarding who will supervise and control the beneficiary's work. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(i) of the L-1 Visa Reform Act. Accordingly, the petition cannot 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 reviews appeals on a *de novo* basis).

2. Specialized Knowledge Specific to the Petitioning Employer

Upon review, the petitioner failed to provide relevant and probative evidence regarding its provision of a product or service at the unaffiliated employer's worksite for which specialized knowledge specific to the petitioning employer is necessary.

The AAO concurs with counsel that the director's decision could be read to imply that the existence of competitors in the petitioner's industry prohibits a finding that the offsite work assignment could be more than "labor for hire." There is, however, no requirement under the L-1 Visa Reform Act that the petitioner

establish that it is providing the unaffiliated employer with a unique service that could not be provided by a competitor.

The petitioner is, however, required to provide sufficient evidence to corroborate its claims that this beneficiary's assignment at the unaffiliated employer's worksite requires the application of his claimed specialized knowledge. Here, the petitioner has not met that burden. The petitioner's MSA, Amended and Restated MSA, and invoice submitted with the initial petition fail to provide any description of the actual project to which the beneficiary will be assigned or otherwise confirm the beneficiary's role in the provision of services to the unaffiliated employer. The petitioner asserts in the letter accompanying its initial submission that the beneficiary will be responsible for "utilizing [the petitioner's] proprietary technologies and methodologies to provide" services to the unaffiliated employer. The petitioner, however, failed to provide any evidence such as a statement of work, work order, letter from the unaffiliated employer, or press release discussing the product or service to be provided to substantiate the claim that the beneficiary will be required to use the petitioner's proprietary technologies and methodologies in the performance of the contracted services. 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)).

Furthermore, the petitioner failed to provide the requested evidence in response to the director's RFE. As stated above, the director's requested additional evidence to establish that the beneficiary "will enter the United States to render services in a capacity that involves specialized knowledge" at the unaffiliated employers worksite. The RFE explained that the petitioner's evidence could include (1) a more detailed explanation of the contracted services to be provided to the unaffiliated employer; (2) proof that the unaffiliated employer received the products or services; (3) updated contracts, statements of work, work orders, or service agreements between the petitioner and the unaffiliated employer; and (4) copies of press releases that discuss the product or service to be provided to the unaffiliated employer by the petitioner. In response, the petitioner submitted a copy of the previously submitted MSA and an organizational chart. The petitioner failed to submit any additional evidence as requested in response to the RFE. 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).

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act. Accordingly, the appeal will be dismissed.

3. Employment in a Specialized Capacity

Beyond the decision of the director, the remaining issue is whether the petitioner established that the beneficiary possesses specialized knowledge and that he has been and will be employed in a capacity requiring specialized knowledge in the United States.

In order to establish eligibility, the petitioner must show that the individual 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 or prongs. 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.

The petitioner stated that the beneficiary will work as a Performance Analyst on the [REDACTED]. As a Performance Analyst, the beneficiary would be responsible for "utilizing [the petitioner's] proprietary technologies and methodologies" in the provision of services. The petitioner further explained the nature of the specialized knowledge position of Performance Analyst as follows:

The Beneficiary's knowledge of the combination of [the petitioner's] proprietary technologies and methodologies with customized third party technologies used to provide performance engineering services for the Shop Deluxe project would be impossible to find outside of [the petitioner].

The petitioner goes on to describe the beneficiary's job duties with respect to utilizing three of the petitioner's proprietary technologies: [REDACTED]. The petitioner, however, fails to provide any additional evidence to support its assertion that it possesses these proprietary technologies and that the knowledge of these technologies is required for the position. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In addition, the director requested evidence to establish that the beneficiary would be working in a specialized knowledge position in the United States. The director stated that submitted evidence could include: (1) a more detailed explanation of the specialized knowledge duties the beneficiary will perform in the United States including the minimum amount of time required to perform the duties; (2) the number of workers in the United States, job descriptions for all persons employed at the same location as the beneficiary, and how many are in L-1B status; (3) the impact on the petitioner's business if the petitioner is unable to obtain the beneficiary's services; and (4) a copy of the United States company's line and block organizational chart.

In response, the petitioner submitted an onsite organizational chart and a list of nonimmigrant employees stationed at the beneficiary's location. The organizational chart shows the beneficiary reporting to directly to the offshore delivery manager, but does not include job titles for over a hundred other employees listed on the chart. Without these job titles or list of duties for other employees on the chart, the organizational chart alone does not establish how the beneficiary would meet the second prong of specialized knowledge, having an advanced level of knowledge of processes and procedures of the company. In short, the petitioner's cursory response of an onsite organizational chart and list of employees located at the petitioner's worksite does not provide any additional explanation or understanding of how the beneficiary will be employed in a specialized knowledge capacity in the United States. 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).

Furthermore, the petitioner failed to establish that the beneficiary was employed in a specialized knowledge position with the foreign employer. In the petitioner's initial letter of support, the petitioner stated that the beneficiary has "undergone a personalized training regimen designed to enhance his project-specific skill set in areas of expertise relevant to the [REDACTED] project." The petitioner refers to an attached list of educational and training credentials for the beneficiary. Of the claimed proprietary technologies listed, the training list shows that the beneficiary completed 4 hours of classroom training on [REDACTED] and 15 days of classroom training plus 1 month of on the job training for [REDACTED].

The record, therefore, shows that the training the beneficiary received to qualify him for the specialized knowledge position totals 15 and a half days of classroom training and one month of on the job training. Without further explanation, the record does not support a finding that this training would provide the beneficiary with an advanced level of knowledge of the processes and procedures of the company, or, a special knowledge of the company product and its application in international markets. The petitioner has not submitted evidence that these tools, while claimed to be exclusive to the petitioner, are of significant complexity, that they require a significant period of training or experience to perform at the beneficiary's level, or that they would otherwise not be easily transferrable to others with experience in the beneficiary's field. Rather, it appears that a similarly-experienced worker could go through similar training and be available to perform the requested duties after the one and a half months of training that the beneficiary underwent. Therefore, as the petitioner's claim is largely based on the beneficiary's familiarity with these internal tools and methodologies, the petitioner has not sufficiently documented that the beneficiary's training

and experience resulted in his possession of specialized knowledge. 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)).

In addition, the director requested evidence to establish that the beneficiary's position abroad involved specialized knowledge to include the following: (1) a letter from the beneficiary's supervisor describing the beneficiary's training or experience with the organization abroad; (2) a more detailed explanation of the specialized knowledge involved in the beneficiary's position abroad; (3) documentation to show specific training courses; (4) a detailed description of the proprietary knowledge possessed by the beneficiary; (5) a chart of the foreign organizational structure; and (6) human resource records to include personnel, training, and pay records.

In response, the beneficiary submitted a chart of the foreign organizational structure and the same list of training courses and educational credential submitted for the beneficiary with the initial petition. The organizational chart shows the beneficiary reporting directly to the offshore delivery manager, but does not include job titles for over a hundred of other employees listed on the chart. Without these job titles or list of duties for other employees on the chart, the organizational chart alone does not establish how the beneficiary would meet the second prong of specialized knowledge, having an advanced level of knowledge of processes and procedures of the company.

Additionally, the petitioner failed to submit any new evidence to establish that the foreign entity employed the beneficiary in a specialized knowledge position. The on-site organizational chart is the only new evidence submitted in response to this request, and as stated above, the chart alone is insufficient to establish eligibility. In short, the petitioner failed to submit any new evidence in response to the RFE to establish that the beneficiary was employed abroad in a position requiring specialized knowledge. 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).

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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).

III. Conclusion

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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. 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 the petitioner had not met that burden.

ORDER: The appeal is dismissed.