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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: FEB 06 2014 Office: CALIFORNIA SERVICE CENTER FILE [REDACTED]

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

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition to classify the beneficiary as an L-1B 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 engaged in consulting and systems integration solutions for high technology manufacturing and semiconductor industries and was incorporated in Delaware in 1997. The petitioner states that it an affiliate of [REDACTED] located in India. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a "Senior Associate, Solution Architect."

The director denied the petition, concluding that the record was insufficient to establish that: (1) the beneficiary's employment abroad was in a position involving specialized knowledge, (2) that the beneficiary possesses specialized knowledge, and (3) that the beneficiary's proposed position in the U.S. would be in a specialized knowledge capacity.

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 states that the petitioner has established by a preponderance of the evidence that the beneficiary has been and will be employed in a qualifying specialized knowledge capacity.

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 parent, subsidiary, or affiliate of the foreign employer.

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

A. Specialized Knowledge

The sole issue addressed by the director is whether the petitioner established that the beneficiary has been employed for one year with the foreign employer in a specialized knowledge capacity and whether he will be employed in a qualifying specialized knowledge capacity in the United States.

Facts and Procedural History

The petitioner states that it, and the foreign employer, provide consulting and systems integration solutions for high technology manufacturing and semiconductor industries, specializing in high technology supply chains and extracting the full value from Oracle's e-Business Suite. The petitioner indicates that it owns a host of proprietary software products that it licenses and installs to increase the efficiency of its customers' Oracle applications, including

The petitioner asserts that it employs 28 employees and its 2011 IRS Form 1120S U.S. Income Tax Return for an S Corporation indicates that the petitioner earned \$3,791,217

in revenue during that year. Further, the petitioner stated that the foreign employer employs approximately 125 information technology professionals abroad.

In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner stated the following with respect to the beneficiary's experience with the foreign employer:

[The beneficiary] has been employed in India by [the foreign entity] since June 2010, and he is currently employed as an Associate - Solution Architect. As a Solution Architect, [the beneficiary] designs and implements enterprise-wide business software solutions to enhance clients' manufacturing automation. To accomplish his assigned duties, [the beneficiary] uses his specialized knowledge of [the company's] proprietary software products to design, develop, implement, and test enterprise resource planning software systems for [company] clients.

As a Solution Architect employed for [the foreign entity] for nearly three years, [the beneficiary] has contributed to the success of [the company] by servicing [its] large and crucial client base. He has developed software solutions for large U.S. companies such as [REDACTED]

Additionally, the petitioner listed the following duties for the beneficiary in his capacity as Associate - Solution Architect, and states that he will continue to perform these duties in the United States:

- Work on software product enhancements for proprietary software products based on additional requirements from [company] clients, utilizing his specialized knowledge gained during his three years of training in the company's proprietary software;
- Implement supplier integration of shop floor transactions with Oracle clients who use [the petitioner's] proprietary software;
- Discuss with clients their current software processes and goals, and identify gaps in the current process with respect to the implementation of [the petitioner's] proprietary software products;
- Review architectural changes in the product architecture to improve the scalability and performance of [the petitioner's] proprietary products;
- Provide resolutions for issues that may arise in the implementation of [REDACTED] proprietary products as part of supporting existing clients;
- Work with [the petitioner's] product development team to upgrade [its] products and fill in gaps identified to meet clients' requirements;
- Implement and integrate [the petitioner's] proprietary products with Oracle e-Business Suites, as applicable, for new clients;
- Work with Oracle applications in the areas of finance, distribution, and manufacturing, involving such Oracle modules as General Ledger, Receivables, Payables, Assets, Cost Management Inventory, Purchasing, Bill of Material and Shop Floor Manager.

- Set up inter-company relations, design and implement intercompany price lists in Oracle Order Management, and define new tax codes in Oracle Receivables, using [the petitioner's] proprietary software tools, including [REDACTED]
- Coordinate with clients with respect to new developments and enhancements to [the petitioner's] proprietary products;
- Coordinate with clients' suppliers concerning transactional issues; and
- Conduct training sessions with client users to enable them to adapt to the proprietary solution provided through [the petitioner's] unique software products.

The petitioner also asserts that the beneficiary received specialized training in its proprietary products not provided to most other professionals working for the foreign employer and petitioner. The petitioner explained:

Those [company] employees who are selected to be trained in working with the company's proprietary software products require at least six or seven months of highly-focused technical training and two or three years of good working knowledge and more hands-on training with respect to these products before they are proficient in them, like [the beneficiary]. It takes at least one to two years to transfer the basic knowledge of [the petitioner's] proprietary products to a professional who has a general IT background.

Currently, [the petitioner] employs approximately twenty employees with highly-specialized training and specialized knowledge in [its] proprietary software products and bundled solutions, whereas [the petitioner's] total IT workforce in such areas as consulting, implementation, and product development consists of approximately one-hundred IT professionals.

The petitioner provided a letter dated March 5, 2013 from the foreign entity, which provided a similar list of duties performed by the beneficiary in his current role in India. The foreign entity added that the beneficiary was hired as an "Associate Trainee" for six months, "during which time he was trained on [the company's] proprietary products as well as on the Oracle e-Business Suite." The foreign entity explained that the beneficiary was promoted to his current position of Associate, Solution Architect after this "high intensity training," and indicated that the beneficiary has continued hands-on training on the petitioner's software solutions "as it takes at least two years to become proficient" in all aspects of the software.

The petitioner provided evidence that the beneficiary is a Certified Implementation Specialist: Oracle Purchasing (Oracle E-Business Suite 12 Supply Chain), and that he completed a course in Basics of Supply Management sponsored by APICS Association for Operations Management. The petitioner also provided the beneficiary's educational credentials, which include a bachelor of technology in Mechanical Engineering and a post-graduate diploma in Industrial Management.

The director found the initial evidence submitted by the petitioner insufficient to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring specialized knowledge. Consequently, the director issued a request for additional evidence (RFE) listing evidence the petitioner could submit to establish that the beneficiary acts in a specialized knowledge capacity abroad, including *inter alia*: (1) a more detailed description of the beneficiary's duties abroad including the percentage of time required to perform specific duties, and (2) a list of the beneficiary's primary duties that involved specialized knowledge, why others had not acquired the special or advanced knowledge, and how such knowledge was different from other Associate - Solution Architects with the foreign employer or others employed in similar positions in the industry.

Further, the director requested additional evidence to establish that the beneficiary held specialized knowledge, suggesting that the petitioner submit a description of the specialized knowledge obtained by the beneficiary through education, training and employment. Specifically, the director explained that the petitioner should indicate the amount of time required to acquire the knowledge, indicate whether the knowledge was held by others in the organization, and describe how the beneficiary has been engaged in significant assignments to enhance the company's productivity, competitiveness, image or financial position, amongst other suggested evidence to demonstrate the special or advanced nature of the beneficiary's knowledge. The director also asked that the petitioner indicate the total number of employees with the foreign employer who have acquired the same knowledge of the company's proprietary information, documentation demonstrating the specialized training completed by beneficiary, a comparison of the company's proprietary products with others in the field, and any patents or published materials relevant to the beneficiary.

Finally, the director stated that the petitioner should submit the following to establish that it would employ the beneficiary in a specialized knowledge capacity: (1) a detailed description of the beneficiary's duties in the United States and the time to be spent on various duties, (2) an explanation of how the duties of the beneficiary are different from other company employees or other similarly employed U.S. workers, (3) any training that will be provided by the beneficiary in his claimed specialized knowledge capacity, and (4) an organizational chart, including the beneficiary's proposed position therein. The director also prominently stated in the RFE that the petitioner's initial evidence failed to compare and contrast the beneficiary's duties with others performing the same type of work both within, and outside, the company.

In response, the petitioner largely reiterated the same assertions provided in support of the petition. For instance, as requested by the director, the petitioner provided percentages of time the beneficiary spent on his tasks, but the petitioner provided few additional specifics regarding the claimed special or advanced nature of his knowledge. The petitioner noted that the software solutions mastered by the beneficiary are proprietary and that the beneficiary received special and advanced training in these confidential proprietary products not available on the open market. The petitioner also noted that along with training in the petitioner's proprietary products, solution architects like the beneficiary receive training in project management, problem solving, client interaction, and leadership. The petitioner stated that the beneficiary's duties in the United States would be largely identical to those performed with the foreign employer. The petitioner asserted that the position could only be filled by a professional who had completed the two to three years of focused training on the company's proprietary products, and that another qualified employee was not available in the marketplace.

The director ultimately denied the petition, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring specialized knowledge. In denying the petition, the director stated that the petitioner had failed to adequately explain the petitioner's tools, processes, procedures and methodologies. The director concluded, based on the evidence submitted, that it appeared the beneficiary performed the same, or similar, duties to other comparable professionals in the field. The director determined that the beneficiary's knowledge of the company's proprietary information was not alone sufficient to establish that he held specialized knowledge and the petitioner had failed to demonstrate that the beneficiary's knowledge was significantly different from that possessed by others similarly employed in the field.

On appeal, counsel states that the petitioner is only required to establish the beneficiary's specialized knowledge by a preponderance of the evidence and contends that the petitioner has met this burden. Counsel asserts that the petitioner's software is proprietary and known only by company employees that receive specialized training reserved for select employees. Counsel again states that acquisition of the beneficiary's knowledge requires six to seven months of highly focused technical training and two to three years of working knowledge with the technology. Counsel notes that only approximately twenty of the foreign employer's one hundred and twenty five professionals hold similar knowledge. Counsel states that the beneficiary has been assigned to significant, and large U.S. clients, and that another untrained employee could not effectively perform the complex duties of the position.

Analysis

Following a review of counsel's assertions and the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed with the petitioner in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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.

In order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). 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. In the present case, the petitioner's claims are

based on both prongs of the statutory definition. Specifically, the petitioner asserts that the beneficiary has special knowledge of the company's products and their application in international markets and an advanced level of knowledge of the company's processes and procedures.

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. 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner has not provided sufficient supporting documentation to establish that the beneficiary holds specialized knowledge of the company's products and their application in international markets or that he has an advanced knowledge of the company's processes or procedures. The petitioner provides extensive documentation related to its proprietary products supporting their widespread utilization by various clients. However, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." Further, the petitioner has failed to submit sufficient supporting evidence to corroborate the assertion that the beneficiary is one of only 20 workers within the organization holding the proffered specialized knowledge. Additionally, the petitioner did not provide sufficient information to allow a specific comparison of a beneficiary's knowledge against that of others within the petitioning company or others holding comparable positions within the industry. This information is critical to determining whether the claimed proprietary knowledge is actually special or advanced. Indeed, the director was well aware of the importance of this analysis when he suggested that the petitioner submit evidence relevant to differentiating the beneficiary's knowledge from others within the company or the industry.

The petitioner did not sufficiently explain, and document, how the beneficiary's knowledge was different from other professionals within the company, beyond stating that the beneficiary and approximately twenty other employees, had undergone highly specialized training distinguishing them from the company's "total IT workforce in such areas as consulting, implementation and product development." The petitioner did not explain where the claimed specialized employees fall within the organizational structure or compare these employees to other company employees not deemed to have specialized knowledge. It is reasonable to conclude that employees responsible for consulting, product development and implementation also receive

training in the petitioner's products and processes, and therefore reasonable to expect the petitioner to distinguish the beneficiary's claimed "highly specialized" training program from the training provided to employees filling other roles within the company.

More importantly, the petitioner did not document its specialized training program or the beneficiary's completion of such a program. This evidence is necessary to both corroborate its claim that the beneficiary possesses specialized knowledge and to support the assertion that this knowledge of internally-developed products and processes constitutes specialized knowledge. The petitioner simply stated that the beneficiary completed six months of training that included both proprietary information and Oracle e-Business Suite. The petitioner failed to provide a breakdown of the specific courses completed, the amount of time allocated to company-specific training, or a comparison of this training against that which would be provided to any new hire.

The director specifically requested that the petitioner submit evidence to establish the content of the courses completed by the beneficiary, their duration, the dates of completion of any relevant courses, and the number of employees enrolled in each course. However, the petitioner provided few of these specifics necessary to demonstrate that the beneficiary completed the claimed rigorous course of instruction, or that the knowledge held by the beneficiary is indeed held by only a select group of professionals within the company. The beneficiary's exposure to proprietary knowledge alone is not sufficient to demonstrate that he or she acts, or will act, in a specialized knowledge capacity. A petitioner must submit sufficient documentary evidence to establish that such knowledge is special and advanced within the organization or the industry. 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)).

Further, although the petitioner indicates that the beneficiary used the petitioner's proprietary tools and solutions in executing various client projects, the petitioner offered no specifics regarding his previous projects to establish that these assignments involved the application of the claimed specialized knowledge. Upon review, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any evidence that would allow USCIS to evaluate the claim. Therefore, the petitioner's claims fail on an evidentiary basis.

Additionally, a material discrepancy in the petitioner's response also leaves question as to whether the knowledge held by the beneficiary is special and advanced. The director asked the petitioner to provide an explanation of the beneficiary's impact on the petitioner's business. However, in providing specific background regarding the beneficiary's assignments, the petitioner referred to a "Mr. [REDACTED]" rather than to the beneficiary thereby leaving question as to whether the petitioner is describing the actual experience of the beneficiary and whether the knowledge held by the beneficiary is truly special and advanced. 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).

On appeal, counsel relies on a policy memoranda issued by the legacy Immigration and Naturalization Service (INS) in support of his assertion that the beneficiary qualifies as having specialized knowledge. *See* James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum). The AAO notes that the Puleo Memorandum referenced by counsel states the following:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at page 4.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product alone do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of its process or product require the employee to have knowledge beyond what is common in the company or the industry. As such, requiring a petitioner to establish that a beneficiary's knowledge is special or advanced compared to his colleagues within, and outside, their organization is an accepted means of determining whether a beneficiary's knowledge of company processes and procedures is set apart from elementary or basic knowledge.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the evidence submitted by the petitioner does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by others employed by the petitioning organization or professionals employed elsewhere in the industry in similar roles. As noted, the petitioner has failed to provide meaningful explanations of the beneficiary's training, experience and knowledge in comparison with similarly employed workers both within the organization or within the industry. Also, the petitioner has failed to substantiate its assertion that the beneficiary received advanced or special training in the company's proprietary products by submitting a detailed explanation of the beneficiary's training or sufficient documentation to corroborate his completion of his training. While the record establishes that the petitioner has developed products that enhance the effectiveness of Oracle solutions for its clients, it has not established that acquisition of this proprietary knowledge requires a significant period of training or experience, such that it could not be readily transferred to an experienced Oracle-trained software professional. 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. at 165.

Based on the foregoing, the petitioner has not demonstrated with sufficient evidence that the beneficiary's knowledge is special or advanced. Therefore, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a qualifying specialized knowledge capacity with the petitioner. For this reason, the appeal must be dismissed.

B. Qualifying Relationship

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer, as required by 8 C.F.R. § 214.2(l)(3)(i).

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

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (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[.]

* * *

(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 . . . [.]

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 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.

In the present matter, the petitioner asserts that it is an affiliate of the beneficiary's foreign employer. The petitioner states that its shares are equally owned and controlled by two individuals: [REDACTED] (10,695,519 shares) and [REDACTED] (10,695,519 shares).

In its initial supporting letter, the petitioner stated that the foreign employer is owned by the following parties: (1) the petitioner (17,500 shares), (2) [REDACTED] (17,500 shares), (3) [REDACTED] (17,500), and that (4) "the remaining 300 shares of [the foreign employer are] owned 100 each by three individuals." Based on the aforementioned ownership, the petitioner contends that Mr. [REDACTED] and Mr. [REDACTED] together own 100% of the petitioner and 99.4% of the foreign employer, and therefore, that the companies have an affiliate relationship.

The petitioner also submitted a statement from the foreign employer's "company secretaries" dated July 2, 2013 which reflects that the foreign employer's shares are owned as follows: (1) the petitioner (17,500), (2) [REDACTED] (17,500 shares), (3) [REDACTED] (17,500 shares), (4) [REDACTED] (150 shares), and (5) [REDACTED] (150 shares).

First, it should be noted that the petitioner has not established that it is an affiliate of the foreign employer according to the plain language of the regulatory definition of affiliate at 8 C.F.R. § 214.2(l)(1)(ii)(L). The petitioner asserts that the foreign employer is owned and controlled by four to five individuals and one company, with no individual having a majority interest in the company. The petitioner is owned and controlled equally by two individuals. While the companies have some common ownership, the entities are not owned and controlled by the *same group* of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. See 8 C.F.R. 214.2(l)(1)(ii)(L)(2). Further, the petitioner's claim that Mr. [REDACTED] and Mr. [REDACTED] together own 99.4% of the foreign entity is unpersuasive. Neither of these individuals owns, directly or indirectly, a majority interest in the foreign entity.

Neither legacy Immigration and Naturalization Service (INS) nor USCIS has ever accepted a combination of individual shareholders as a single entity, so that the group may claim majority ownership, unless the group members have been shown to be legally bound together as a unit within the company by voting agreements or proxies. Therefore, to establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

The petitioner's claim that Mr. [REDACTED] and Mr. [REDACTED] both hold majority ownership in each of the entities is not established with sufficient evidence. The petitioner has not submitted any evidence to indicate that Mr. [REDACTED] or Mr. [REDACTED] own more than 50% of the petitioner or the foreign employer. Further, the petitioner has not demonstrated that any party has majority control over the foreign employer. As such, the petitioner has not demonstrated that any party has "de jure" control of the petitioner or the foreign employer. Furthermore, the petitioner has not submitted any evidence that would give either of these owners "de facto" control of the petitioner or the foreign employer, such as an agreement on the part of these owners to vote in concert. Therefore, the petitioner's assertion that both entities are majority controlled by Mr. [REDACTED] and Mr. [REDACTED] is left unsupported. 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)).

For the foregoing reasons, the petitioner has not established that it has a qualifying relationship with the foreign employer. For this additional reason, 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).

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Oriende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.