identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

b7

[redacted]

DATE: JUN 27 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will withdraw the director's decision and remand the matter to the director for further action and entry of a new decision.

The petitioner filed this nonimmigrant visa petition to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), U.S.C. § 1101(a)(15)(L). The petitioner, a seafood processing company, is a subsidiary of [redacted] The petitioner seeks to employ the beneficiary in the position of Seafood Processing Technical Advisor for a period of three years. The petitioner indicates that the beneficiary will work onsite at seafood processing plants operated by its affiliates and suppliers.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(iii). In denying the petition, the director observed that the beneficiary has been employed intermittently by the U.S. petitioner in E-1 status since 2002. The director further emphasized that the record contains no evidence that the beneficiary has been working for the petitioner's parent company in Japan.

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 asserts that the director erred in denying the petition on grounds that were not raised in the Request for Evidence ("RFE") issued on February 20, 2009. Counsel contends that documentation previously submitted showed that the beneficiary began working for the petitioner's parent company in Japan in 1972 and that he has continued to work with the same company and its affiliates in Japan and the United States since that date. Counsel submits a brief and evidence to establish that the beneficiary has been on the Japanese company's payroll throughout the last five years.

I. The Law

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized

knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" as:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. *Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.*

(Emphasis added).

II. Facts and Procedural History

The sole issue addressed by the director is whether the beneficiary had at least one continuous year of full-time employment with a qualifying organization within the three years preceding the filing of the petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 30, 2009. The petitioner indicated on the Form I-129 that the beneficiary was employed by its Japanese parent company, [redacted], since March 1972. The petitioner also indicated that the beneficiary was admitted to the United States in E-1 status on January 13, 2009, and requested that USCIS notify the U.S. Consulate in Tokyo upon approval of the petition so that the beneficiary could obtain an L-1B visa and be re-admitted. The petitioner stated that the beneficiary has 36 years of experience as a seafood processing technician for its Japanese parent company and its affiliates.

In a letter dated January 23, 2009, the petitioner further described the beneficiary's employment history as follows:

> He joined [the foreign entity] in March 1972 and he is one of their most senior Seafood Processing Technicians. From 1972 to 1994, he worked mainly on processing of [redacted] in the Bering Sea and also shoreside plants in Alaska. From 1994 to 2006, he engaged in processing of surimi on board the Ocean Phoenix and in shoreside plants in Alaska on a seasonal basis. From 2007 to present, he has engaged in processing of crab and Pollock roe in shoreside plants in Alaska on a seasonal basis.

The director issued a request for additional evidence ("RFE") on February 20, 2009. The director did not specifically request additional evidence to establish that the beneficiary has the requisite one year of continuous, full-time employment with a qualifying organization abroad.

The director denied the petition on June 2, 2009, concluding that the petitioner failed to establish that the beneficiary possesses at least one continuous year of full-time employment abroad within the three years preceding the filing of the petition.

In denying the petition, the director noted that the beneficiary has been granted E-1 nonimmigrant status and has traveled to and from the United States since 2002. The director further found that the petitioner had not submitted documentation demonstrating that the beneficiary has been employed at the foreign entity in the preceding three years. The director noted that records show that the beneficiary typically enters the United States in January, departs in March, re-enters in June and subsequently departs in September of each year.

On appeal, counsel asserts that the director erred in denying the petition on grounds that were not raised in the Request for Evidence, and without giving the petitioner an opportunity to submit additional documentation concerning the beneficiary's prior employment abroad.

Counsel asserts:

> The documents previously submitted showed that the beneficiary began working with the petitioner's parent company in Japan in 1972 and that he has continued to work with the same company and its affiliates in Japan, the United States and other countries since that date. The petitioner is now submitting additional documents (including U.S. and Japanese withholding tax and payroll records and a list of his entry/exit dates to/from the United States) which show that the beneficiary has been on the payroll of the petitioner's parent company in Japan continuously during the past 5 years, that he has been sent to work with the petitioner in the United States on a seasonal basis as an E-1 specialist, and that he has spent a total of more than one year in Japan during the past three years.

Counsel's brief includes a chart detailing the beneficiary's dates in the United States from January 2006 through June 2009. The chart indicates that the beneficiary spent 179 days abroad in 2006, 168 days abroad in 2007, 284 days abroad in 2008, and 81 days abroad during the first five months of 2009. The petitioner also submits the beneficiary's "Withholding Statement of Wage Payment," for the years 2004 to 2008 issued by [redacted] personnel department, as well as IRS Forms W-2, Wage and Tax Statement, issued by the petitioner for the years 2004 to 2008. Counsel emphasizes that the evidence shows that only one-third of the beneficiary's gross salary is for services rendered in the United States.

Counsel further asserts:

> It should be noted that even if [the beneficiary] had not been employed for more than 1 year in Japan during the past 3 years, he would still qualify for the L-1B petition. As USCIS acknowledged in its decision, employment prior to the three-year period immediately preceding the filing of the petition may be counted if the alien was admitted to the United States during the past three years for employment with the same organization or a U.S. affiliate. In *Matter of Continental Grain*, 14 I&N Dec. 140 (D.D. 1972), the beneficiary was found to have the one year qualifying experience even though it did not occur within the 3 years preceding the filing of the petition. In that case, the beneficiary had 7 months of employment abroad immediately prior to filing the petition, 28 months spent in the United States as an H-3 trainee prior to that, and more than 5 months of employment abroad prior to that. USCIS held that the beneficiary could tack the most recent 7 months to the prior 5 months of employment abroad, even though there was an intervening period of 28 months spent in the United States and even though the one year of employment abroad did not fall entirely within the three years immediately preceding the filing of the petition. [The beneficiary] has spent his entire career working for Nippon Suisan Kaisha Ltd. and its affiliates. Thus even if he did not spend a full year in Japan during the past three years, he could still quality based on his employment in Japan during the three years prior to his admission to the United States as an E-1 specialist. For your information and reference, enclosed are documents showing that the petitioner's Japanese parent company owned the factory trawler vessel on which the beneficiary was employed abroad before he began coming to the United States on a seasonal basis as an E-1 specialist.

The petitioner also submits a statement confirming the beneficiary's employment with the petitioner's group since 1972. Specifically, the petitioner states:

> From 1972 to 1988, he was working on [redacted] that was owned and operated by [the foreign entity]. Beginning in 1990, he started coming to the United States on a seasonal basis to work as an E-1 specialist in [the foreign entity's] Unisea plant in Dutch Harbor, Alaska (previously named [redacted]. [The beneficiary] has remained an employee of [the foreign entity] and [the foreign entity] has continued to pay his full salary even when he is temporarily working in the USA on a seasonal basis.

The petitioner submits an excerpt from the foreign entity's 1987 Annual Financial Report which contains a list of its seafood processing vessels, including the Mineshima-Maru.

III. Discussion

Upon review, the AAO agrees, in part, with counsel's assertions and will withdraw the director's decision.

Counsel has set forth two arguments in support of the appeal. First, counsel contends that the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) allows USCIS to consider the cumulative number of days the beneficiary spent working outside the United States during the three years preceding the filing of the petition in determining whether he has accumulated a total of one year of foreign employment during that time period. In the alternative,

counsel argues that the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) allows USCIS to look beyond or "reach over" the immediate three year period preceding the filing of the petition to determine whether the beneficiary had accumulated one year of continuous full-time employment abroad prior to his initial admission to work for the petitioner in a valid nonimmigrant status. The AAO finds the latter interpretation to be correct.

To review the required one year of continuous employment abroad, USCIS must count back three years from the date that the L-1A petition is filed. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that an individual petition filed on Form I-129 be accompanied by evidence that the beneficiary "has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition." The definition of "intracompany transferee" also indicates that, if the beneficiary has been employed abroad continuously for one year by a qualifying organization within three years preceding the time of the beneficiary's "application for admission into the United States," the beneficiary may be eligible for L-1 classification. 8 C.F.R. § 214.2(l)(1)(ii)(A).

However, when the definition of "intracompany transferee" is construed together with the regulation at 8 C.F.R. § 214.2(l)(3) and section 101(a)(15)(L) of the Act, the phrase "preceding the time of his or her application for admission into the United States" refers to a beneficiary whose admission or admissions pertained to the rendering of services "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure." Statutes and regulations must be read as a whole, and interpretations should be consistent with the plain purpose of the Act to avoid absurd results. *See generally Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

Therefore, according to the plain purpose of the Act and regulations, USCIS may not reach over *any* admission and subsequent stay, *unless* that admission was "for a branch of the same employer or a parent, affiliate, or subsidiary thereof [or] brief trips to the United States for business or pleasure." 8 C.F.R. § 214.2(l)(1)(ii)(A). Unless the authorized period of stay in the United States is either brief or "on behalf" of the employer, the period of stay will be interruptive of the required one year of continuous employment abroad. *See* 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987) ("Time Spent in the United States Cannot Count Towards Eligibility for L Classification"); *see also Matter of Continental Grain Company*, 14 I&N Dec. 140 (D.D. 1972) (finding that an intervening period of stay is not interruptive when the beneficiary was in the United States as an H-3 trainee on behalf of the employer).

Here, the petitioner claims that the beneficiary was employed for one continuous year with the petitioner's parent company during the three-year period immediately preceding his initial admission to the United States in E-1 status in 1990. As the beneficiary was admitted to the United States for the purpose of employment with a United States subsidiary of his foreign employer, and the same employer or an affiliate now seeks to employ him in L-1B status, the beneficiary's employment in the United States is not interruptive of his one year of continuous employment abroad.

In denying the petition, the director failed to take into account the provisions of 8 C.F.R. § 214.2(l)(1)(ii)(A), which states, in relevant part, that "periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement." Had the beneficiary been admitted to the United States to

work for an unrelated company in E-1 or other nonimmigrant status, the director's position would be correct. However, a beneficiary's one year of continuous employment abroad, once established, remains continuous, despite the beneficiary's subsequent stay in the United States for a branch, affiliate, subsidiary, or parent of the foreign entity in an authorized nonimmigrant status. Accordingly, the director's decision was in error and will be withdrawn.

With respect to counsel's argument that USCIS should, in the alternative, consider the beneficiary's accumulated time spent working outside the United States during the three years preceding the filing of the petition, we note that counsel has not advanced any support for the proposition that the regulatory definition of intracompany transferee was intended to create an exception to the statutory requirement that the beneficiary be employed continuously for one year with a qualifying entity abroad within the three years preceding his application for admission. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The AAO cannot find that the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) contemplates a situation whereby a beneficiary could acquire one year of continuous qualifying employment abroad by aggregating periods of employment with a foreign entity while concurrently employed by a United States entity.

Although the director's decision will be withdrawn, the AAO finds insufficient evidence in the record to warrant a conclusion that the beneficiary possessed the one year of continuous full-time employment abroad prior to undertaking his regular assignments to the United States. Accordingly, the petition will be remanded to the director for further review and action consistent with the discussion below.

The critical facts in this matter relate to the exact period(s) of the beneficiary's continuous and uninterrupted employment with a qualifying organization abroad. As noted above, the beneficiary's seasonal employment in the United States in E-1 status for the petitioner or its U.S. affiliates or subsidiaries will not be considered interruptive of his qualifying employment abroad. Therefore, the petitioner need only establish that the beneficiary has been continuously employed within the petitioner's international group of companies and that he had at least one continuous year of employment abroad prior to undertaking his regular intermittent assignments in the United States.

The petitioner has provided evidence that the beneficiary was on the payroll of [redacted] from 2004 to 2008, during a period of time in which he was also intermittently employed in the United States pursuant to an E-1 visa. The petitioner should be instructed to provide additional evidence of the beneficiary's continuous full-time employment with the foreign entity that pre-dates his intermittent United States employment.

The petitioner states that the beneficiary was employed on [redacted] that was owned and operated by the foreign entity between 1972 and 1988, and that he has worked in the United States on a seasonal basis since 1990. Although the petitioner has provided evidence that the foreign entity owned [redacted] as of March 31, 2007, additional evidence will be necessary to document the beneficiary's period of full-time continuous employment with the foreign entity during the relevant time period, within three years prior to his first U.S. assignment.

The petitioner has submitted an "onboard history" for the beneficiary which was provided to detail the beneficiary's work history with the foreign entity. The document shows regular intermittent employment [redacted] between March 1972 and June 1988. The chart shows no

assignments between June 17, 1988 and October 1989, a period of training in Japan from January to April 1990, and then the beneficiary's first assignment to the petitioner's Alaskan affiliate in May 1990. Therefore, the relevant timeframe for the purposes of determining whether the beneficiary has one year of qualifying employment abroad appears to be the period from May 1987 through May 1990. The director is instructed to request additional documentary evidence in support of the beneficiary's continuous employment abroad, including personnel or payroll records, tax records or other documentary evidence that would support the petitioner's claims that the beneficiary possesses the required one year of continuous full-time employment abroad.

The petitioner should also provide evidence that the company's seafood processing technicians were treated as "full-time" employees during the relevant time period between May 1987 and May 1990, as it appears that the beneficiary typically had several weeks or months between on-board assignments, and one apparent gap in employment of more than one year between June 1988 and December 1989. The petitioner has not indicated what, if anything, the beneficiary did during these periods, or whether he was paid for those periods in which he did not have an onboard assignment. The plain language of the regulation at 8 C.F.R. § 214.2(l)(3)(iii) requires the petitioner to submit evidence of the beneficiary's "continuous year of *full-time* employment abroad."

Further, the AAO finds that the record as presently constituted does not establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity requiring specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS', burden to articulate and establish by a preponderance of the evidence that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

Based on the evidence of record as presently constituted, the petitioner has failed to establish either that the beneficiary's last position abroad (in the late 1980s) or his current position in the United States 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 failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced seafood processing specialists employed by the petitioning organization or in the petitioner's industry. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner claims that the beneficiary's specialized knowledge is based upon his knowledge of the parent company's seafood processing systems and techniques, quality control standards and the special requirements of the Japanese market. However, the petitioner has not differentiated its processing methods or quality standards from those of any other seafood company. Merely claiming that the beneficiary is familiar with internal processes and standards is insufficient if those standards are not materially different from those that are generally known and used by similarly experienced workers.

It is reasonable to believe that the petitioner's industry is highly regulated in the United States and Japan, with quality control standards that must be met by any licensed seafood processer. While the petitioner provided a fairly detailed description of the steps that occur during Pollock roe, surimi and salted roe processing at its affiliate's Alaskan plant, and noted that some additional steps are needed for certain products exported to Japan, it remains unclear what, if any, specialized knowledge is required to supervise these operations, or what differences exist between the Japanese market and other markets in terms of seafood processing, appearance and quality control. Even if the petitioner could establish that knowledge of Japanese market requirements constitutes specialized knowledge for the purposes of employment in the United States, the petitioner is also required to establish that the beneficiary's qualifying period of employment abroad involved specialized knowledge. The petitioner has not claimed that Japanese seafood processing specialists working in Japan are unfamiliar with Japanese market requirements, and the AAO assumes that such knowledge is in fact commonly held among the foreign entity's workforce.

As the petitioner has not specified the amount or type of training its technicians receive in the company's tools and procedures, it cannot be concluded that its processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced seafood processing specialist who is familiar with the Alaskan and Japanese seafood industries.

Based on the current record, the evidence submitted does not establish that knowledge of the petitioner's processing or quality control techniques or familiarity with the Japanese seafood market constitutes specialized knowledge or that this knowledge is so complex that it could not be readily transferred to similarly trained and experienced employees from outside the petitioning organization.

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

In this regard, the petitioner relies on the beneficiary's long tenure with the foreign entity working in its seafood processing operations all over the world. The petitioner has not explained in any detail the specific capacities in which the beneficiary has worked, and it is not clear to what extent he has been employed as a regular processing technician, or to what extent he has been employed in a "specialist" or "technical advisor" position. The evidence submitted does not demonstrate a progression in his skills, assignments or level of authority over his long tenure with the company or suggest that he has achieved a role that is reserved for those with an advanced knowledge of the company's policies and procedures. It is unclear at what point in the beneficiary's 36-year tenure he was considered to have acquired specialized knowledge. The petitioner has also not provided any information that would assist USCIS in comparing the beneficiary's skills and knowledge to that of other similarly employed workers within the organization, many of which may have a similarly long tenure with the company. The petitioner's argued standard for advanced knowledge appears to require nothing more than an extended period of service performing duties related to the U.S. position, qualifications that may be widely held by the petitioner's Japanese workforce.

At this time, the AAO takes no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determinations on those issues. So far, the director has not done so. By remanding this matter, the AAO does not necessarily find that the beneficiary is ineligible for the benefit sought. Rather, we remand the matter because the director based the decision on incorrect grounds.

Therefore, the AAO will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.