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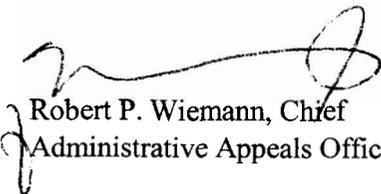
IN RE: Petitioner:
Beneficiary:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its applications software analyst/programmer as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims that it is a branch of the beneficiary's foreign employer, [REDACTED], located in Mumbai, India, and is operating in the United States as an information technology consulting firm. The petitioner now seeks to extend the beneficiary's stay for two years.

The director denied the petition on March 12, 2002, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) improperly applied the appropriate statute and regulation to the evidence in its denial of the petition. Counsel asserts that the beneficiary possesses specialized knowledge that can only be gained through "extensive prior experience with [the petitioner's] methodologies and software." Counsel further states that the petitioner's "proprietary tools and procedures are not available in the public domain" but only to the petitioner's employees. In addition, counsel states that the specialized knowledge possessed by the beneficiary is limited to a "very few number of [the petitioner's] employees who specialize in the development, implementation and application of [the petitioner's] internally developed banking tools." Counsel further explains that the beneficiary gained his specialized knowledge through a three-month training course provided by the petitioner, and through the beneficiary's "work on numerous projects abroad." Counsel states that the beneficiary obtained specialized knowledge of the petitioner's "internally designed banking products," and lists these products. Counsel also acknowledges the director's concern that 87 people are in the United States in L-1B status working on the same contract as the beneficiary and therefore it does not appear that the position requires a person with specialized knowledge. Counsel asserts that 87 individuals on one team is not high since the petitioner employs over 17,500 consultants.¹ Counsel submits a brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

¹ While the petitioner may have a total of 87 individuals in L-1B status working on this specific project, the AAO notes that CIS records indicate that the petitioner has filed a total of 16,429 L-1B petitions, with more than 3,979 petitions filed during fiscal year 2006.

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.

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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 petitioner filed the instant nonimmigrant petition on October 26, 2001, indicating that the beneficiary would be employed in the United States as an "Applications Software Analyst/Programmer." In a letter dated October 19, 2001, the petitioner stated that the foreign organization is a worldwide information technology consulting firm, and it develops a "range of software for applications in special industries, such as banking, insurance, health care, telecommunications, retail and manufacturing." The petitioner

also described the duties the beneficiary will continue to perform for his current on-site project in the United States for the United Services Automobile Association (USAA) as the following:

One of USAA's key systems, the Automobile Insurance Maintenance System (AIMS), is being re-engineered from its old technology to an object based design. [The petitioner] has been enlisted to build, design, develop, and implement the object based business model. This is a 300-person year project is [sic] expected to be completed in two years. [The petitioner] is completing the First Phase of identifying and modeling the highest level of objects. The Second Phase of the project involves identifying all of the business objects and modeling them. The Third Phase involves the design, construction, and implementation. USAA currently needs an Applications Software Analyst/Programmer with skills in insurance product modeling. [The beneficiary] has worked on insurance product modeling and has the specialized knowledge and experience required for the position.

[The beneficiary] will continue to work as an Applications Software Analyst/Programmer and will be responsible for analyzing, gathering user requirements, designing, and developing. In addition, he will ensure that [the petitioner's] processes and standards are applied to this project.

For this project, [the beneficiary] will continue to utilize his specialized knowledge of [the petitioner's] internally designed, ISO 9000 certified, offshore development processes and its exclusive development, testing and quality assurance tools and procedures. [The beneficiary] will continue to remain on [the petitioner's] payroll and will be directly supervised by a [petitioning company] manager at all times.

[The beneficiary] has specialized knowledge of the proprietary [petitioning company] designed development systems and tools used on this project. In addition, as a [petitioning company] professional, he has worked on similar projects and has acquired a thorough knowledge of UNIX, Solaris, HP-UX, Windows 95/98/NT, MS-DOS, C, Pro*C, Shell Programming, SQL, PL/SQL, Visual Basic, Developer 2000, Turbo C, XML, HTML, SQL Forms, SQL DBA, SQL Loader, Oracle, and MATLAB. His specialized knowledge of [the petitioner's] development methods, procedures and software tools is required for the data analysis, migration, technical design, programming, testing, implementation and documentation process involved in this project.

The petitioner also submitted the beneficiary's resume that outlined the job positions filled by the beneficiary during his employment with the petitioner as of November 1998. The resume also indicated that the beneficiary completed a two-month training program with the petitioner that "envisaged the whole of Software Development Life Cycle."

The director issued a request for additional evidence on December 1, 2001, stating that the record does not show that the beneficiary possesses specialized knowledge. The director requested: (1) an explanation of how the beneficiary's specialized knowledge of the petitioner's proprietary development

procedures, methodologies, and tools is different from every other programmer that it employs; (2) an explanation as to whether the beneficiary participated on the project he is currently working on while employed by the foreign company abroad; (3) evidence verifying that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by others in the beneficiary's field or in the industry, or evidence that the beneficiary's advanced level of knowledge of the company's processes and procedures distinguishes him from those with elementary or basic knowledge; (4) evidence that the beneficiary possesses knowledge that is not commonly held throughout the industry but that is truly specialized or advanced, which may include knowledge that is valuable to the employer's competitiveness in the marketplace; and/or that he is qualified to contribute to the petitioner's knowledge of foreign operating conditions; (5) confirmation that the beneficiary has been utilized abroad on significant assignments that have enhanced the employer's productivity, competitiveness, image, or financial position, and that the knowledge possessed by the beneficiary can only be gained through prior experience with the foreign employer; (6) verification that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; (7) an explanation of the difference between the position currently held by the beneficiary in L-1B status and one that is held in H-1B status; (8) identification of the positions at the project site where the beneficiary is currently working and if it requires a person possessing specialized knowledge; (9) an explanation as to the manner in which the beneficiary has gained his specialized knowledge, including the total length of any classroom or on-the-job training courses completed and the minimum amount of time required to train a person to work in the position the petitioner is seeking to fill; (10) a statement discussing the type of training, both formal education and in-house training, needed for an individual to be able to adequately perform the duties of the proposed position; and, (11) an explanation of the petitioner's internally designed ISO 9000 certified, offshore development processes and its exclusive development, testing, and quality assurance tools and procedures.

The petitioner responded in a letter dated January 23, 2002, stating that the beneficiary "satisfies each element of L-1B Intracompany Transferee Classification." In addition, the petitioner explained how the beneficiary's employment abroad was in a position that involved specialized knowledge as follows:

[The petitioner] requires a bachelor's degree or higher of every Applications Software Analyst/Programmer we send to the United States on account of the highly complex, technical nature of the work that the Applications Software Analyst/Programmer will perform. Further, [the petitioner's] training program in which all [of the petitioner's] Applications Software Analyst/Programmer must participate before being placed in the United States follows a rigorous academic curriculum... [The petitioner's] training program lasts up to four months of full-time classroom training, and emphasizes systems development process, advanced concepts of programming, database management, data communication, testing, and system integration.

* * *

[The petitioner] operates within a unique organizational structure for delivery of its software services. This involves the organization of its offices in India into centers oriented towards the use of a particular type of hardware and/or software and the

development of its own standardized procedures for the development cycle. Similarly, [the petitioner] has internally developed its own Software Development Tools used in the analysis, design and testing of systems which it implements. [The petitioner's] organizational structure and the internal development of its own procedures and tools allow it to offer an exceptionally high level of services for software development, maximizing the number of software engineers with particularized expertise working on a specific project, reducing development time and utilizing the latest hardware available. [The petitioner's] unique organizational structure, as well as its internal development procedures and tools, are proprietary in nature.

Upon beginning his employment with [the petitioner] in India, [the beneficiary] participated in [the petitioner's] intensive training program, where he immediately began developing an expertise in [the petitioner's] complex, unique software, [the petitioner's] particular organizational structure, and its internal development procedures mentioned above. The training program includes instruction on [the petitioner], Software Development Process, Requirement Engineering, Structured System Design, Software Maintenance, QMS, Reviews, Walk Through and Inspection, Testing and Debugging, Data Communication and Networking, and numerous other technical topics such as Unix and C, Cobol, User interface Concepts and GUI, IBM Overviews, and followed at SEI – CMM Level 5 companies.

Through [the petitioner's] training program and over the course of [the beneficiary's] employment with [the petitioner], he has become well versed in [the petitioner's] proprietary ISO 9000 certified Software development process, software maintenance process, requirements engineering methodologies, systems design methodologies, and testing and debugging procedures. [The beneficiary] has a specific specialty in [the petitioner's] designed code, routines, methodologies, and logic that form the backbone of [the petitioner's] software development and maintenance offerings in the data collection and distribution sector. Further, he is highly skilled with [the petitioner's] proprietary, ISO 9000 certified, Onsite/Offshore software development process which utilizes a high speed satellite datalink that allows offshore teams to work in tandem with onsite teams. [The beneficiary] has worked on developing proprietary applications at [the petitioner's] offshore location in India and thus has substantial experience with [the petitioner's] processes and procedures.

In addition, the petitioner stated that it was “uniquely qualified to perform the advanced services required for the completion of this project due to its extensive internally designed banking tools.” The petitioner further stated that it has developed innovative banking software products in “various divisions of the banking field.” The petitioner listed the company's internally designed banking products that included the “integrated standard banking system (ISBS),” “Quartz,” “eTreasury,” “Inter Bank Reconciliation System (IBR),” “Asset Liability Management System (ALMITY),” “BankOnABM,” and “eBankWorks.” The petitioner also stated that the beneficiary's “extensive specialized knowledge of these [the petitioner's] proprietary tools and procedures is vital to the USAA project.” The petitioner further

asserted that the beneficiary has “extensive proprietary knowledge” of the petitioner’s internally developed tool, ISBS.

The petitioner further explained that all “IT staff from [the petitioning company] around the world complete the intensive classroom training,” and for an employee to qualify for an assignment in the United States, they must complete the training program and “must have completed at least one complete year of intensive work with [the petitioner] in India.”

In addition, the petitioner asserted that the beneficiary meets the requirements set forth in the Puleo memorandum in that he possesses (1) knowledge valuable for competitiveness; (2) unusual knowledge of foreign operating conditions; (3) experience with significant assignments abroad that were beneficial to the employer; and (4) knowledge that can only be gained with the employer or which can not be easily transferred. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991)(“Puleo Memo”). The petitioner noted that the beneficiary has been utilized as a “key employee” on several assignments and has worked on “detailed consulting projects involving data analysis, migration, technical design, programming, testing, implementation, and documentation.”

The petitioner’s response to the director’s request for evidence also explains how the position offered to the beneficiary in the United States requires an individual with specialized knowledge. The petitioner stated that it had been providing “development services” to its client in the United States for the past two years, and assisting the client with a “SEI-CMM assessment and in moving to higher levels.” In addition, the petitioner stated that it has “taken over the maintenance of Bank system, Claims and Enterprise Systems.” The petitioner explained that the two main applications under Bank systems is Credit Application Sales Processing and Reporting (CASPAR) and Home Loan Sales/Member Financial Profile (HLS/MFP). The petitioner explained both applications and the technological architecture of each application. The petitioner asserted the following:

[The beneficiary] will continue to be responsible for CASPAR and HLS “maintenance, enhancements to the software, work allocation, and client interaction for new requirements utilizing his extensive specialized knowledge gained through his experience in India including ISBS, Unix, Windows NT, MVS, OS2, Bankpro, PL/SQL, VB, Cobol, and Perl.

For this project, [the beneficiary] will continue to utilize his specialized knowledge of [the petitioner’s] internally designed, ISO 9000 certified, offshore development processes and its exclusive development, testing, and quality assurance tools and procedures. There are currently eighty-seven [of the petitioner’s] L-1B employees onsite at USAA in San Antonio, Texas. These employees participated in [the petitioner’s] Initial Training in India outlined above, and each worked for [the petitioner] in India for over a year in order to master [the petitioner’s] unique software development tools and processes before beginning his assignment at USAA at San Antonio, TX. With the exception of general team management tasks, the members of [the beneficiary’s] team will perform the same production tasks as [the beneficiary].

The petitioner also submitted a letter from the petitioner's resident manager personnel certifying that the beneficiary completed 19 courses as part of his training with the petitioner. In addition, the petitioner submitted a copy of the "training program materials" for the petitioner's training program in India.

On March 12, 2002, the director denied the petition concluding that the petitioner did not establish that the position of Application Software Analyst/Programmer requires someone with specialized knowledge, or that the beneficiary has such knowledge. The director noted that the beneficiary's duties do not appear to be significantly different from those of any other programmers employed by the petitioner, or different from the duties performed by other programmers in the computer industry. The director also noted that all programmers hired by the petitioner must undergo a three-month training course and therefore the training program is not specialized since it is offered to all programmers and not a select few who will obtain an advanced or specialized knowledge. The director asserted that the beneficiary did not obtain the advanced knowledge of the software required for the United States project since he did not work on the same project while employed by the foreign company. The director further stated that the United States project consists of 87 programmers and thus it appears that the position in the United States does not require an individual with specialized knowledge. The director asserted that the petitioner did not demonstrate that the petitioner's processes and procedures are significantly different from the methods generally used by other information technology consulting companies. The director stated, "the employees of the petitioning company simply use existing software and programming languages with some modifications and adjustments based on the needs of the clients."

On appeal, counsel for the petitioner asserts that the petitioner "selects only its top professionals to complete its overseas assignments on account of the highly complex, technical nature of the work." Counsel contends that the director erred by stating that the petitioner does not have any "proprietary" programs since the regulations do not state such requirement. Counsel also states that the beneficiary obtained his specialized knowledge through the three month training course and his tenure with the petitioner where he was "utilized as a key employee" on several important assignments. Counsel further asserts that the beneficiary has significant experience in the field of banking, and reiterates the experience the beneficiary has obtained with banking software as stated in the response to the director's request for evidence. Counsel further contends that it was erroneous to require that the beneficiary work on the same project abroad since this is not a requirement under the regulations, and states that although the beneficiary did not work on the same project abroad, he "clearly gained valuable specialized knowledge with [the petitioner's] proprietary banking tools." Counsel asserts that 87 individuals in L-1B status working on the project in the United States is a small number considering the petitioner employs 17,500 consultants. Counsel further states that the director erred in requiring that the beneficiary have experience in the "design or writing of exclusive proprietary software or tools" as this is not required under the regulations.

On review, the petitioner has not demonstrated that the beneficiary would be employed in the United States organization in a specialized knowledge capacity. In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

Although the petitioner repeatedly asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated any basis to support this claim. The petitioner has provided a detailed description of the beneficiary's proposed responsibilities as an application software analyst/programmer, however, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other programmers employed by the petitioner or the information technology or banking industry at large. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner has repeatedly asserted that the beneficiary will be responsible for "CASPAR and HLS maintenance, enhancements to the software, work allocation, and client interactions for new requirements," however, the petitioner does not establish that the beneficiary must possess knowledge of business processes, procedures and methods of operation that are unique and proprietary to the company in order to modify, maintain and update the applications server. The petitioner did not submit evidence to demonstrate that the petitioning company is the only, or one of the few, companies that utilizes CASPAR and HLS programs. There is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that his level of knowledge is comparatively "advanced." As noted by counsel for the petitioner, there is no requirement that the beneficiary must develop the internal methodologies and processes, but this may be evidence of an advanced knowledge of the petitioner's internal processes that will demonstrate that the beneficiary possesses a specialized knowledge. Furthermore, according to the beneficiary's resume, it does not appear that he participated in any projects that involved CASPAR and HLS software while employed by the foreign company. Although the petitioner stated that the beneficiary is qualified to perform the duties in the United States due to his "extensive proprietary knowledge of [the petitioner's] internally developed tool, ISBS," it does not appear from the beneficiary's resume that he is working with ISBS in the United States project. Therefore, it does not appear that the beneficiary has previous exposure with CASPAR and HLS when employed by the petitioning company abroad. 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).

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to application software analyst/programming positions within the U.S. company are different from those applied for other companies providing software consulting services to the banking industry. Moreover, there is no evidence on record to suggest that the computer programming processes pertaining to the banking industry, specifically, are different from those applied for any computer programming position. In addition, the petitioner has not explained how the knowledge of the petitioner's banking software products amounts to specialized knowledge, particularly since the systems are built upon Unix, VB, Cobol, Perl, Bankpro, Oracle, and PL/SQL technologies, all of which are commonly used by computer programmers and system administrators in the industry. While

individual companies will develop a computer system tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. In the request for evidence, the director specifically requested that the petitioner identify the manner in which the beneficiary gained his specialized knowledge, including the total length of any classroom training or on-the-job training courses completed. In its response, the petitioner submitted a certification of participation from the petitioner indicating that the beneficiary participated in the in-house training program for a total of approximately three months. In reviewing the training program materials submitted by the petitioner, it appears that a large part of the training encompassed general subject matters such as Unix, C Programming, software maintenance and operating systems, and it does not specify if the beneficiary was trained in the petitioner's banking software such as CASPAR, HLS or ISBS.

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).² As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

² Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

Id. at 53.

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). As noted previously, although the definition of “specialized knowledge” in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of “proprietary” knowledge, the AAO finds that the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification “will not be large” and that “[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service.” *Id.* at 51. The decision noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed “L” category. In response to the Chairman’s questions, various witnesses responded that they understood the legislation would allow “high-level people,” “experts,” individuals with “unique” skills, and that it would not include “lower categories” of workers or “skilled craft workers.” *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, “[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.” 18 I&N Dec. at 119. According to *Matter of Penner*, “[s]uch a conclusion would permit extremely large numbers of persons to qualify for the ‘L-1’ visa” rather than the “key personnel” that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

The beneficiary’s job description does not distinguish his knowledge as more advanced or distinct among other applications software analysts/programmers employed by the foreign or U.S. entities or by other unrelated companies. The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term “specialized knowledge” is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, “[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F. Supp. 9, 15 (D.D.C. 1990).³ The Congressional record specifically states that the L-1

³ Again, Congress’ 1990 amendments to the Act did not specifically overrule *1756, Inc.* nor any other administrative precedent decision, nor did the 1990 amendments otherwise mandate a less restrictive

category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Further, the Puleo memo cited by counsel allows CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." *Memo, Supra*. A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

The record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other programmers within the petitioning company, and within the information technology industry. As noted above, it appears that the petitioner's products are based on computer languages that are common in the information technology industry and are generally utilized by computer programmers. In addition, the petitioner stated in its January 23, 2002 response that all programmers employed by the petitioning company must undergo the same training program. The petitioner further stated, "before being assigned to the U.S., each [of the petitioner's] specialized knowledge workers must have completed at least one complete year of intensive work." As all employees must undergo the same training and work experience prior to working in the United States as a specialized knowledge employee, the

interpretation of the term "specialized knowledge." The House Report, which accompanied the 1990 amendments, stated:

One area within the L visa that requires more specificity relates to the term "specialized knowledge." Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company.

petitioner failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52. If the AAO were to follow the petitioner's reasoning, then any employee who had completed the training program and worked as a software analyst/programmer with the parent company for at least one year possesses specialized knowledge. However, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee status. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

Furthermore, it should be noted that Congress' 1990 amendments to the Act did not specifically overrule *1756, Inc.*, nor any administrative precedent decision, nor did the 1990 amendments otherwise mandate a less restrictive interpretation of the term "specialized knowledge." The House Report, which accompanied the 1990 amendments, stated:

One area within the L visa that requires more specificity relates to the term "specialized knowledge." Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company.

H.R. REP. No. 101-723(I), 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418. As previously noted, the statutory definition states, "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." 8 U.S.C. § 1184(c)(2)(B).

The AAO does not dispute that the petitioner's organization has its own internal information systems processes and methodologies. However, there is no evidence in the record to establish that the beneficiary's knowledge of these systems processes and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the claimed "advanced knowledge." The petitioner has not submitted sufficient documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures and methodologies would differentiate him from any other similarly employed software analyst/programmer within the petitioner's group or within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel's reliance on the Puleo memorandum is misplaced. It is noted that the memoranda were intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memoranda is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. While the factors discussed in the memorandum may be considered,

the regulations specifically require that the beneficiary possess an “advanced level of knowledge” of the organization’s processes and procedures, or a “special knowledge” of the petitioner’s product, service, research, equipment, techniques or management. 8 C.F.R. § 214.2(I)(1)(ii)(D). As discussed above, the petitioner has not established that the beneficiary’s knowledge rises to the level of specialized knowledge contemplated by the regulations.

In sum, the beneficiary’s duties and technical skills demonstrate knowledge that is common among computer systems professional working in the beneficiary’s specialty in the information technology field. The petitioner has failed to demonstrate that the beneficiary’s training, work experience, or knowledge of the company’s processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large information technology consulting companies. The AAO does not dispute the fact that the beneficiary’s knowledge has allowed him to successfully perform his job duties for the foreign entity. However, the successful completion of one’s job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a “key personnel,” nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary’s knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary’s field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

The legislative history of the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra at 16*. Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

It is noted that the current petition is for an extension of a L-1B petition that was previously approved by the director. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between the court of appeals and the district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.