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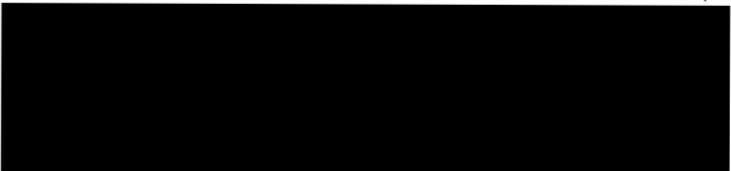
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



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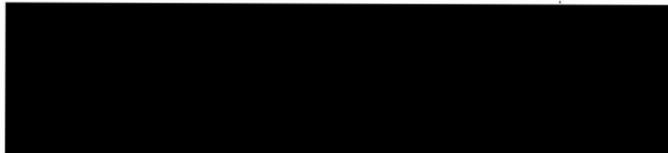
File: SRC 04 234 50986 Office: TEXAS SERVICE CENTER Date: DEC 27 2006

IN RE: Petitioner:
Beneficiary:



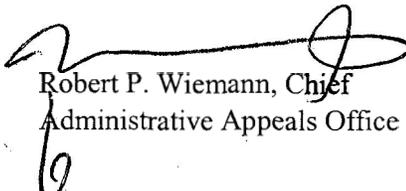
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas 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 employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Georgia limited liability company, claims that it is engaged in the design and manufacture of proximity access control systems. It states that it is a subsidiary of [REDACTED], located in South Africa. The petitioner seeks to employ the beneficiary as a training and support engineer for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, that he was employed in a position involving specialized knowledge for at least one year prior to the filing of the petition, or that the proffered position in the United States is in a capacity requiring specialized knowledge.

The petitioner subsequently filed an I-290B Notice of Appeal, requesting that the director first consider the new evidence offered as a motion to reopen the denial. 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's decision is "arbitrary, capricious and an abuse of discretion," and contends that the petitioner has submitted sufficient evidence to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity in the United States. Counsel submits a brief and additional evidence 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.

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.

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 the following:

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 nonimmigrant petition was filed on August 31, 2004. In a letter dated August 30, 2004, the petitioner stated that its South African parent company is involved in the design and manufacture of a full range of proximity access control systems, incorporating RFID, integrated CCTV, time and attendance applications, digital video recording, and biometrics. The petitioner was established in 2001 to sell and distribute these systems in the United States. The petitioner's chief executive officer further described its products and the beneficiary's current and proposed roles as follows:

[The foreign entity] has created proprietary software known as ImproNet which runs the proximity access control systems that we market. Additionally, the company has created a proprietary "firmware" known as ImproX which allows our installed hardware to communicate. Currently the [chief executive officer] is the only person within [the U.S. company] with sufficient training and knowledge of these proprietary systems. With the growth of our U.S. operations, it is essential that I use my time in business areas other than the training of staff and installers. Therefore we have selected [the beneficiary] to serve in the position of Training and Support Engineer at [the U.S. company]. We will also begin writing our own software at our U.S. office with intentions to grow a U.S. based Research & Development team which will ultimately result in U.S.-based manufacture. . . . In this position, he will be responsible for the training of internal support technicians and salespeople. Additionally, he will provide outside customer training. Finally, [the beneficiary]

will provide advanced technical support to our customers, working with them to begin the development of further software modules developed at our U.S. office.

[The beneficiary] has served as a Support and Training Technician for [REDACTED] since April of 2003. In this position, he answers support calls from customers and dealers, etc., regarding problems with the products. Additionally, he conducts training of hardware and software for various dealers in Impro products. [The beneficiary] also develops and writes various applications that improve communications in the support department and tracks support calls. Finally, he develops and writes various applications that test the ImproX range of products. [The beneficiary] previously served as a Programmer in the Testing Department with Impro SA from June of 2002 until November of 2002. In this position, he used Visual Basic and Cbuilder to write and maintain applications that tested the outgoing products. [The beneficiary] is one of only five individuals within [the foreign entity] who possesses the requisite knowledge and training on both ImproNet and ImproX to fulfill this position.

The petitioner noted that the beneficiary possesses a bachelor's degree in accounting and information systems, completed a six-month Java programming course in June 2002, and is proficient with Java, C++, Visual Basic and Delphi. The petitioner also submitted a product brochure and company information from the parent company's web site.

On October 7, 2004, the director issued a request for additional evidence, advising the petitioner that the evidence of record was insufficient to establish that the beneficiary possesses specialized knowledge. The director referenced the regulatory definition of specialized knowledge, and noted that the L-1B classification was not intended for all employees with any level of specialized knowledge. Referencing a 1994 legacy Immigration and Naturalization Service memorandum, the director noted that an alien would possess specialized knowledge if it was shown that the knowledge is different and advanced from that generally held within the industry. The director advised that the petitioner must therefore provide evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director further noted that the evidence should also establish that the beneficiary's knowledge of the petitioner's processes and procedures is apart from the elementary or basic knowledge possessed by others within the company. Specifically, the director instructed the petitioner as follows:

- Submit evidence relating to the unique methodologies, tools, programs, and/or applications that your company uses. Evidence may include your company's brochure or other literature describing the tools your company uses. Please describe in detail how these are different from the methodologies, tools, programs and/or applications used by other companies.
- Explain, in more detail, exactly what is the equipment, system, product, technique or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad.

- Please submit a record – as opposed to merely a letter – from your human resources department detailing the manner in which the beneficiary has gained his/her specialized knowledge. Documentation should indicate the pertinent training courses in which the beneficiary has been enrolled while working at your company, as well as the duration of the courses, the number of hours spent taking the courses each day, and certificates of completion of these courses.
- Indicate the minimum amount of time required to train an employee to fill the proffered position. Specify how many workers are similarly employed by your organization. Of these employees, please indicate how many have received training comparable to the training administered to the beneficiary.
- If the specialized knowledge was attained through the course of regular on-the-job experience, please clarify exactly what knowledge was attained through the beneficiary's past employment with the company. For each facet of specialized knowledge, please explain how the particular knowledge was different from knowledge attained by individuals in the identical or similar position for the company.

Counsel for the petitioner submitted a response dated November 24, 2004. The response included an undated letter from the petitioner in which it responded to each of the director's requests. The petitioner indicated that the parent's company's software developers have developed three proprietary software packages (ImproNet Access Control Software Suite, IXP 200 Access Control Suite, and IXP 100 Access Control System), using Java programming language supporting a Firebird SQL open source database. The petitioner further explained that the software packages are unique because they are developed in Java and are therefore able to operate on multiple operating systems, including Windows, Linux and Apple OS, and because they support a "popular open source database called Firebird SQL." The petitioner stated that it is the only company in the access control industry supporting this database and claimed that specialized knowledge is required for its configuration and support. The petitioner emphasized that its software packages would only work with the company's own hardware and the *ImproX Secure Protocol*.

The petitioner stated that the beneficiary has specialized knowledge of the petitioner's proprietary software and hardware, noting that the products designed and developed by the petitioner's organization are marketed and supported exclusively by the petitioner worldwide. The petitioner noted that the equipment is not used or produced by any other access control manufacturer in the United States or abroad.

With respect to the beneficiary's training, the petitioner stated:

While working for [the foreign entity] [the beneficiary] was enrolled in and completed a Java programming course. This specialized training combined with his Bachelor of Commerce degree majoring in Information Systems and Accounting allowed him to develop specific aspects of the ImproNet software suite. This included the development of the application support for Microsoft SQL and Oracle database support. He was also responsible for developing software for the test procedures run on the test jigs after production to quality test

the ImproX hardware. As a result of this specialized knowledge and his involvement in the development of the Impro software, [the beneficiary] has been selected to establish a software development team based in our US office which will be dedicated to furthering the development of the Impro software for specific US customer requirements.

The petitioner further stated that “the minimum time required to train an employee to fill the proffered position of Training, Advanced Support and Software Development Engineer would be 2 years.” The petitioner explained that the training process would involve an “in-depth knowledge of the product from concept design through to production and marketing and would require the individual to be based for that period of time in the South African manufacturing facility.” The petitioner noted that the beneficiary would train and recruit American personnel for the U.S. technical support team and use his proficiency in the Afrikaans language to communicate with software and support personnel in South Africa.

The petitioner indicated that the U.S. company current employs one support engineer who is responsible for responding to customer support calls, but notes that his in-house training is limited to the functionality of the product and does not include product development knowledge. The petitioner noted that the beneficiary would recruit an additional support engineer and also establish a software development team to further the development of software with features specifically designed to meet the needs of the U.S. market.

The petitioner stated that the foreign entity employs over 150 employees in South Africa, and noted that twelve of them have specialized product knowledge similar to that possessed by the beneficiary.

With respect to the beneficiary’s training, the petitioner submitted a letter from the foreign entity’s research and development director which states that the beneficiary received “specialized internal product training” in the following areas: ImproX secure communications protocol (December 1, 2001 through February 1, 2002); Impro Installing Dealer training (February 2002); Impro software methodology (April 2002 through August 2002, two hours per day); Understanding of Impro’s database structure (October - November 2002); and third-party software integration including socket and port connections (May – June 2003).

Finally the petitioner emphasized that the beneficiary has gained diverse knowledge “on-the-job” by working in several departments in the manufacturing facility in South Africa. The petitioner summarized the beneficiary’s experience as follows:

- Quality Control and Product Testing – specialized software development knowledge and proficiency in the ImproX hardware protocol and firmware test commands.
- Research and Development – specialized knowledge of the software source code; application connectivity to relational databases which included Microsoft Sequel Server 2000 connectivity and Oracle 9 connectivity; 3rd party software integration methodologies.
- Technical Support and Training – experience in complex system support and configuration supporting both dealers and end users; experience in the training methods Impro employs to train both dealers and end users.

The director denied the petition on December 14, 2004, concluding that the petitioner had not established that the beneficiary possesses specialized knowledge or that the beneficiary's current or offered positions require specialized knowledge. The director found that the beneficiary's training in the Java programming language and use and knowledge of open source code, even if used to develop specific aspects of the petitioner's software suite, is not sufficient to establish that he possesses specialized knowledge or that the position requires specialized knowledge. The director noted that knowledge of these technologies is commonly held in the information technology industry, and found no evidence that the beneficiary himself had actually developed Firebird SQL code or open source codes.

The director further referenced the petitioner's statement that it would require a minimum of two years to train an employee to perform the position being offered to the beneficiary in the United States. The director noted that since the beneficiary has only been employed by the foreign entity for two years and two months,¹ "then the beneficiary can only have at most two months of specialized knowledge." The director therefore concluded that even if the beneficiary had been found to possess specialized knowledge, he would not meet the regulatory requirement of having performed in a specialized knowledge capacity for a year prior to the filing of the petition.

On appeal, counsel for the petitioner asserts that the beneficiary's qualifications "clearly fall within the definition of specialized knowledge as set forth in the Service's own regulations, precedent decisions and memorandums issued by the Service." The petitioner submits four letters from U.S. "certified installing dealers" and customers, who state the need for the services of a qualified engineer from the South African company to assist in hardware and software installation and training of end-users. As these letters are part of the record, they will not be repeated herein.

Counsel further states:

[W]e have a petitioner with a proprietary software product that the beneficiary is eminently familiar with. The end users of this proprietary product have stated emphatically that they need the services of the beneficiary in order to adequately install this product. The Service's own regulations define "specialized knowledge" as "knowledge possessed by an individual of the petitioner organizations' product . . . and its application in international markets." The present petition reads almost like a case hypothetical for the Service's definition of specialized knowledge. The beneficiary, in addition to having attained a professional degree, has been specifically trained by the petitioner's parent company in the use and implementation of a proprietary software. The end users in the international market state that the beneficiary has unique skills that are required to implement products costing hundreds of

¹ The AAO notes that, based on the information provided by the petitioner, the beneficiary was employed by the foreign entity from June 2002 through November 2002, and from April 2003 until May 31, 2004, for a total of approximately 18 to 19 months. The beneficiary was admitted to the United States on a B-1 nonimmigrant visa on May 31, 2004 and was in the U.S. at the time of filing. This time spent in the United States will not be included in calculating the beneficiary's period of qualifying employment abroad. *See* 8 C.F.R. § 214.2(l)(1)(ii)(1).

thousands of dollars. If [the beneficiary] does not qualify for an L-1B visa, it is difficult to imagine who would.

Counsel's assertions are not persuasive. On review, the petitioner has not established that the beneficiary possesses specialized knowledge, or that the intended position in the United States requires specialized knowledge.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner's descriptions of the beneficiary's current and proposed duties are too vague to demonstrate that beneficiary has been or would be required to utilize specialized knowledge of the petitioner's products, or advanced knowledge of its processes and procedures. For example, the beneficiary's current duties as a support and training technician were described as answering support calls from customers and dealers regarding problems with products, training dealers regarding hardware and software, writing applications used internally to track customer support activities and developing and writing "various applications" used to test the "ImproX range of products." The petitioner noted that the beneficiary previously worked as a programmer for five months, using Visual Basic and Cbuilder to write and maintain applications used to test outgoing products. Other than declaring that its products are proprietary, the petitioner did not indicate what specialized knowledge the beneficiary utilizes to provide technical support for the products, nor did it describe the nature and scope of the training provided by the beneficiary, or the "various applications" the beneficiary has written to test the petitioner's products. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner's initial description of the beneficiary's duties did not indicate that he was involved in software development outside of developing applications used to test final products in his current role as a training and support technician for the foreign entity.

Further, the petitioner declared that the beneficiary was "one of only five individuals with the foreign entity" who possess the requisite knowledge and training on ImproNet and ImproX technologies, but did not clarify the specific training the beneficiary received, or otherwise attempt to set the beneficiary's knowledge apart from that of its other employees. Based on the limited information provided, it is reasonable to conclude that the beneficiary was employed as a technician who was sufficiently familiar with the foreign entity's products to train dealers on their installation, provide customer support, and test final products. While the petitioner and counsel assert that the beneficiary has "specialized knowledge" of the petitioner's products, the lack of specificity pertaining to the beneficiary's work experience and training, particularly in comparison to others employed within the petitioner's group and in this industry, as discussed further below, fails to distinguish the beneficiary's knowledge as specialized. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to the director's request for additional evidence related to the beneficiary's specialized knowledge, the petitioner added that the beneficiary's responsibilities abroad have included "the development of application support for Microsoft SQL and Oracle database support." Again, the petitioner offered no further explanation regarding the specific duties the beneficiary performed, the applications he developed or specialized knowledge required to perform these duties. Knowledge of SQL and Oracle technologies is common in the information technology industry, therefore, without further explanation, the development of applications to support these technologies alone will not establish that the beneficiary's role with the foreign entity involved specialized knowledge. Further, the AAO notes that the initial description of the beneficiary's duties made no mention of the beneficiary's involvement in product development, which the petitioner subsequently claimed is the basis of the beneficiary's specialized knowledge. This duty was added only after the director advised the petitioner that the initial evidence did not satisfy the statutory and regulatory requirements. Overall, the evidence suggests that the beneficiary's primary role with the foreign entity is related to customer support and training functions, not product development.

Similarly, although the petitioner asserts that the beneficiary's proposed position requires specialized knowledge, the petitioner has not articulated any basis to this claim. Other than submitting a general description of the beneficiary's proposed job duties, the petitioner has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. Specifically, the petitioner indicated that the beneficiary's role would include training internal support technicians and salespeople, providing outside customer training, providing advanced technical support to customers, and "working with them to begin the development of further software modules developed at our U.S. office." The petitioner provided no information regarding training to be provided to the company's existing employees or customers, nor did it identify what specific tasks are involved in "advanced technical support" or elaborate regarding the petitioner's proposed software development efforts. Again, other than noting that its products are proprietary, the petitioner submitted no evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of technical support and training engineer at other employers working in the petitioner's 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. 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).

Finally, the petitioner has not submitted evidence to establish that the beneficiary's familiarity with the petitioner's proprietary products alone is sufficient to constitute specialized knowledge. In response to the director's request that the petitioner describe in detail how the petitioner's products, methodologies, tools, programs or other applications are different from those developed or used by other companies, the petitioner emphasized that its products are developed in the Java programming language using a Firebird SQL open source database. The petitioner explained that its software packages are unique in the access control market because they are developed in Java and can therefore run on multiple operating systems, while its competitors utilize Microsoft development tools that limit their software to operating on Windows operating platforms. The petitioner further stated that it is the only company in its industry supporting Firebird SQL, which is described as a "popular open

source database.” However, while the petitioner may have differentiated its products’ software packages from its competitors, the fact remains that the petitioner’s software is developed using technologies that are widely available and commonly known within the information technology industry. The petitioner has not furnished evidence to demonstrate that the beneficiary’s duties involve knowledge or expertise beyond what is commonly held in his field. Mere familiarity with an organization’s product does not constitute specialized knowledge under section 214(c)(2)(B).

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*, 18 I&N Dec. 49, 52 (Comm. 1982), 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.” 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.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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). 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 reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the

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, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

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, supra* 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 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 cannot 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.")

It should be noted that 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.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C. The director determined that the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment required specialized knowledge. 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.

Here, the petitioner initially stated that four other employees within the foreign entity possess the same knowledge as the beneficiary, and in response to the director's request for evidence, indicated that twelve employees of the foreign entity have similar specialized product knowledge. The petitioner did not clarify these conflicting statements, nor further elaborate as to what positions the other employees hold or the type of training they have received. It is not clear if the beneficiary's claimed specialized knowledge was attained

through the course of regular on-the-job training or whether he completed a more formal training program, although the director specifically requested that the petitioner provide detailed information regarding the beneficiary's training and that provided to similarly employed workers in the foreign entity. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In addition, the dates of the beneficiary's claimed training do not coincide with his dates of employment with the foreign entity. The petitioner indicated that the beneficiary worked as a programmer in the product testing department from June 2002 until November 2002, and as a support and training technician from April 2003 until the present. However, three of his training courses appear to have taken place prior to his commencement of employment with the company. 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).

Accordingly, the petitioner has provided insufficient evidence to substantiate its claim that the beneficiary is one of either five or twelve people who possess the claimed specialized knowledge. Furthermore, the fact that the beneficiary may gain knowledge in a particular area solely through the completion of an internal training program is not determinative of whether the beneficiary possesses specialized knowledge. In fact, there is no evidence in the record that the training courses involve advanced or specialized subject matter that would distinguish the beneficiary from similarly employed support technicians in the access control field. The petitioner indicated that the beneficiary initially assumed the duties of a programmer with the foreign entity based on his bachelor's degree in information technology and completion of an introductory Java programming course, which further supports a conclusion that the knowledge required to participate in software development for the foreign entity is available outside the company..

As discussed above, beneficiaries of L-1B petitions should be more than merely skilled, but rather must be shown to carry out key processes or functions. In addition, the petitioner should establish that the beneficiary's knowledge meets the plain meaning of "special." See 8 C.F.R. § 214.2(l)(1)(ii)(D) (defining "specialized knowledge" as "special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests"). "Special" is defined as "surpassing the usual; distinct among others of a kind; peculiar to a specific person or thing." *Webster's II New College Dictionary* 2001, Houghton Mifflin. See also *Webster's Third New International Dictionary*, 2001 (defining special as "distinguished by some unusual quality; uncommon; noteworthy.") In this case, the petitioner has established only that the beneficiary is a trained employee who fills a position the petitioner considers important. However, the beneficiary has been working as a technician for the foreign entity. While the AAO acknowledges it is the beneficiary's actual job duties and not his job title that determine whether he possesses specialized knowledge, the record does not establish that the beneficiary, as a training and support technician, has played a lead or senior role in the development or enhancement of the petitioner's products. The petitioner has not established that the beneficiary performs unusual duties or that he is employed primarily to carry out a key process or function. See *Matter of Penner*, 18 I&N Dec. at 52. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *Id.* at 53.

Furthermore, as noted by the director, the evidence of record does not establish that the beneficiary meets the petitioner's own stated requirements for the position offered in the United States. The petitioner stated that the minimum time required to train an employee to fill the proffered position would be approximately two years and would require "in-depth knowledge of the product through concept and design through to production and marketing" which could only be gained at the foreign entity's manufacturing facility. The beneficiary himself is claimed to have worked for the entity abroad for a cumulative total of only 18 to 19 months and his experience has not been shown to encompass product concept, design, or marketing. Thus it appears that the petitioner has either overstated the requirements for the U.S. position or the beneficiary is not qualified for the position offered. The petitioner has not addressed this issue on appeal, and thus, even if the U.S. position did require specialized knowledge, it cannot be concluded that the beneficiary possesses the requisite knowledge.

Finally, the AAO acknowledges the petitioner's submission of letters from its clients and dealers, who attest to the need for the services of qualified personnel from the foreign entity to assist in various product installation projects, and note that the petitioner has identified the beneficiary as an employee the company would like to transfer to the United States to undertake these duties. However, as there is no evidence that the petitioner's U.S. dealers have any firsthand knowledge of the beneficiary's experience or "specialized knowledge," their statements carry little weight in this proceeding. Further, it appears that the dealers themselves are trained to undertake such installations, but simply require additional manpower due to the size of the contracts they have been awarded, as they indicated that they have personally begun installation of the petitioner's access control systems at their clients' sites.

The legislative history for 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 does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.