U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D7

[redacted]

APR 08 2004

FILE: EAC 02 172 52513 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

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

The petitioner states that it is a computer software development firm. It seeks to employ the beneficiary temporarily in the United States as a technical consultant. The director denied the petition concluding that the beneficiary is not employed in a position that involves specialized knowledge. The director stated that the petitioner had failed to demonstrate that the procedures used by the beneficiary are significantly different from the methods generally used in other computer software development firms, or that the beneficiary's understanding of the petitioning organization's products, processes and procedures constitutes specialized knowledge. The director also stated that the petitioner had not established that the position being offered to the beneficiary requires the services of an individual possessing specialized knowledge. The petitioner subsequently filed an appeal.

On appeal, counsel for the petitioner asserts that the director improperly applied the relevant statute to the evidence previously submitted in support of the beneficiary's specialized knowledge capacity.

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.

According to the evidence submitted, the petitioner is a subsidiary of Hexaware Technologies Ltd., located in India. The petitioner was incorporated in 1993 and states that it is a computer software development firm.

The petitioner claims 170 plus employees and $32,000,000 in gross annual income. The petitioner seeks to employ the beneficiary as a technical consultant for a period of three years, at a yearly salary of $60,000.00.

The issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge, and will be employed in a specialized knowledge capacity.

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.

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.

In a letters of support, dated April 15, 2002 and April 19, 2002, the petitioner stated that the beneficiary has been employed by the foreign entity since July 12, 2000 in a capacity of Software Engineer in the Enterprise Application Integration (EAI) Group. The petitioner further stated that the beneficiary's area of expertise includes Microsoft platform with a special focus on Microsoft Applications. The petitioner further stated that the beneficiary has developed Applications using Wml, WmlScript, A.S.P., JavaScript, VBScript, VB6.0, Unix, IIS4.0, Com, M.T.S., Uml, PeopleTools, SQL-Server(6.5), (7.0), Oracle 7.3, 8.0 Crystal Report 7.0, and PeopleSoft. The petitioner asserted that the beneficiary has been actively involved in design, development, and testing of various applications on Microsoft Platforms, and fine tuning SQL statements on Oracle SQL server. The petitioner also stated that the beneficiary has been exposed to creating databases, tables, assigning permissions, and changing database properties on MS SQL servers. The petitioner asserted that the beneficiary was actively involved in implementing WAP for IDBI Bank. In addition, the petitioner stated that the beneficiary possessed a working knowledge of PeopleTools, SQR and web-based applications. The petitioner further stated that the beneficiary acquired two years of professional work experience as a software developer.

In a support letter, dated April 19, 2002, the beneficiary's proposed job duties are described as follows:

> [The beneficiary] will fill the position of Technical Consultant in the Application Management Group at our Princeton, New Jersey office. This position requires specialized knowledge of [the U.S. entity's] proprietary product line and, in particular, specialized knowledge of the "Connector" technology. This position requires that [the beneficiary]: (1) design, develop, and provide customized implementation for clients' systems utilizing the "Connector" technology; (2) obtain clients' sign off; (3) system testing; and (4) to provide user training to the clients.

In that same letter, the petitioner stated the reason for the transfer of the beneficiary to the United States as follows:

> [The petitioner] maintains a regular rotational program for key personnel with unique and proprietary knowledge of the company's internal procedures, methods, and product lines. This rotation assures that all key personnel are in touch with the most current techniques and procedures of all of the various aspects of [the U.S. entity's] procedures and services and ensures that some level of uniformity is achieved throughout the various offices.

The petitioner described the beneficiary's experience working for the foreign entity as follows:

> [The beneficiary] has been employed by the [foreign entity] in India since July 12, 2000. During this period, he has been working in the capacity of a Software Engineer in our EAI (Enterprise Application Integration) Group. His primary skill set includes Microsoft platform with a special focus on Microsoft applications. He has developed applications using Wml, WmlScript, A.S.P., JavaScript, VBScript, VB6.0, Unix, IIS4.0, Com, M.T.S., Uml, PeopleTools, SQL-Server(6.5), (7.0), Oracle 7.3, 8.0 Crystal Report 7.0, and PeopleSoft. He has been actively involved in design, development and testing of various applications on Microsoft platforms, fine tuning SQL statements on Oracle, SQL-Server. He has also good [sic] exposure on creating databases, tables, assign permissions, change database properties on MS SQL server [sic].

The petitioner further stated in the letter of support that the beneficiary was awarded a Bachelor's Degree in Engineering from the University of Madras, in 1998.

The petitioner submitted as evidence a copy of an academic evaluation prepared by the Trustforte Corporation dated April 23, 2002; an employment confirmation letter from the foreign entity, identifying the beneficiary's employment from July 12, 2000 to the present; a Bachelor's degree in Engineering from the University of Madras; and transcripts. The petitioner submitted a letter signed by the director of Veeras Infotek Pvt. Ltd., located in India. The director stated that the company employed the beneficiary since June 1998 as a software developer. The director of the company further stated that the beneficiary was involved in system study, design, development, and deployment at the client's place of business. The petitioner also submitted copies of the beneficiary's pay slips issued by the foreign entity dated April 2001 through August 2001, and October 2001 through March 2002.

In a request for evidence, the director noted that the record did not sufficiently establish that the beneficiary had truly specialized knowledge or that he had been and will be employed in a truly specialized knowledge capacity. The director requested that the petitioner submit evidence establishing that: (1) the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by practitioners in the beneficiary's filed of endeavor; (2) the beneficiary's advanced level of knowledge of the processes and procedures of the company distinguish him from those with only elementary or basic knowledge; (3) the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly special or advanced; (4) the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace; (5) the beneficiary is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry; (6) the beneficiary has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position, that he possesses knowledge, which normally can be gained only through prior experience with that particular employer; and (7) the beneficiary possesses knowledge of a product or process that cannot

be easily transferred or taught to another individual. The director further stated that the evidence must substantiate that the beneficiary possesses knowledge of the firm's business procedures or methods of operation to the extent that the U.S. entity would experience a significant interruption of business in order to train a U.S. worker to assume the duties proposed for the beneficiary in the United States.

In response, counsel for the petitioner submitted a statement asserting that the beneficiary has an advanced level of knowledge of the petitioning company's processes and procedures relating to software interfaces. Counsel reiterated a description of the beneficiary's work experience and job duties. Counsel further stated that the beneficiary had gained in-depth knowledge and expertise in the company's interface products through his employment with the foreign entity. Counsel contends that the foreign entity has invested a large sum of money in setting up training and production facilities dedicated to the development of its interface products. Counsel also contends that all the company's technical consultants (including the beneficiary) who possess knowledge of the interface products were trained and employed by the foreign entity. Counsel asserted that the beneficiary possesses "specialized knowledge" and is distinct among others in the computer field based upon his combination of skill sets, which include knowledge of connector technology products and IDBI Bank and Exult software applications. Counsel stated that the beneficiary's knowledge is different from that which is ordinarily encountered in the field.

Counsel continued by asserting that only a small percentage of the organization's technical consultants both in India and the United States possess specialized knowledge of the company's "Connector" technology. Counsel further stated that 13 percent of the consultants (including the beneficiary) in India and 8 percent of the consultants in the United States possess specialized knowledge in this respect. Counsel concludes by contending that many of the ongoing projects have reached a point where the physical presence of technical consultants (including the beneficiary) who possess specialized knowledge of the entity's Connector interface technology is required on site in the United States.

In his decision, the director concluded that the record did not establish that the beneficiary has been or would be employed in a specialized knowledge capacity, as required for classification as an L-1B intracompany transferee. Upon reviewing the detailed description of the beneficiary's job responsibilities, the director determined that the job duties were not significantly different from those of other technical consultants in a computer software development firm, and does not "warrant the expertise of someone possessing a truly specialized knowledge." The director further stated that the petitioner had failed to demonstrate that the foreign entity's interface or connector technology was significantly different from the technology generally used in other software development companies. The director also stated that the petitioner had failed to demonstrate how an understanding of the company's technology constitutes "specialized knowledge." The director stated that while the petitioner states that it is the only company, other than the vendors of middleware or hub products, that possess the expertise in the 'connector' or interface products; the statement suggests that all companies that sell the middleware or hub products are also well versed in 'connector' or interface products. The director concluded that therefore, an in-depth knowledge of "connector" and interface products does not appear to be unusual for an individual employed as a technical consultant in the industry.

The director also noted that the petitioner's explanation of the beneficiary's duties seemed to merely paraphrase the definition of "specialized knowledge." The director concluded that the petitioner had failed to document how the beneficiary's knowledge of the processes and procedures, namely familiarity with the "connector" or interface technology of the petitioning organization are advanced or substantially different from the knowledge possessed by other individuals similarly employed. The director also concluded that the petitioner had failed to sufficiently demonstrate that the knowledge the beneficiary possesses would be

difficult to impart to another individual without significant economic inconvenience to the U.S. or foreign entities or that the knowledge is not generally known and is of some complexity. Consequently, the director denied the petition.

On appeal, counsel for the petitioner submits a brief in which he asserts that the director reached an erroneous conclusion based upon an improper reading of the relevant section of the Act. Counsel also contends that the director reached an erroneous conclusion in that he mistakenly concludes that the beneficiary does not quality for L-1B status in a specialized knowledge capacity because of the lack of evidence to establish that the beneficiary's knowledge of the processes and procedure of the U.S. and foreign entities are substantially different from, or advanced in relation to, any individual similarly employed. Counsel further reiterates a description of the beneficiary's knowledge, training, and expertise in the computer software development field. Counsel asserts that the beneficiary received his specialty training regarding Constellar Interfaces from the foreign entity and that within the company only a handful of consultants possess this specialized knowledge. Counsel further asserts that the beneficiary's combined knowledge of the company's proprietary products, such as "Constellar Interfaces" qualifies as "specialized knowledge." Counsel also states that the beneficiary's knowledge of the company's "Constellar Interfaces" product makes him extremely valuable to the organization's competitiveness in the information technology market, and that he is uniquely qualified to contribute to the U.S. entity's knowledge of the product due to the training and development of the product at the foreign entity. Counsel further states that the beneficiary has been assigned to significant projects such as the IDBI Bank and Exult project. Counsel concludes by stating that the beneficiary's combined knowledge of the foreign entity's proprietary product, such as Constellar Interfaces and the software applications of IDBI Bank and Exult, is significant and qualifies as "specialized knowledge." Counsel further asserts that a typical technical consultant in the foreign or U.S. entity's office or in the IT industry at large would not be able to perform the beneficiary's duties as they do not possess the knowledge of the "Constellar Interface" product that he possesses.

On review of the record, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity as required in 8 C.F.R. § 214.2(l)(3)(ii). In the instant case, the petitioner has failed to provide sufficient evidence to show that the beneficiary has been employed by a foreign entity in a specialized knowledge capacity for one continuous year, within the three years prior to the filing of the petition. 8 C.F.R. § 214.2(l)(3)(iii) and (iv). The petitioner contends that the beneficiary has been employed in a specialized knowledge capacity for the requisite period of time pursuant to the regulations. It is noted for the record that the petition in this case was filed April 25, 2002. The petitioner submitted a letter into evidence from the Veeras Infotek Pvt. Ltd, which indicated that the beneficiary was employed as a software developer for this unrelated company from June 1998 through April 2000. The petitioner stated in a letter of support that the beneficiary had been employed by the claimed parent company since July 12, 2000 as a software engineer. However, payroll records show that the beneficiary was employed with the foreign entity from April 2001 to August 2001, and from October 2001 to March 2002, less than the requisite one year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence contained in the record fails to establish that the beneficiary has been employed in a specialized knowledge capacity by a foreign entity for one continuous year, within three years prior to the filing of the petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Counsel contends that the beneficiary possesses specialized knowledge of the organizations products, processes, and procedures. Counsel asserts that the beneficiary acquired the specialized knowledge through the training programs offered to the beneficiary by the foreign entity at its training and production facilities in India. Contrary to counsel's contentions, there is no evidence of record to demonstrate that the beneficiary received the claimed training. The petitioner has not presented any evidence to substantiate the claim that the courses offered by the foreign entity equip the beneficiary with specialized knowledge not common to other system analysts in the industry. There has been no evidence submitted such as degrees, certification, course transcripts, or certificates of completion to establish that the beneficiary received specialty training regarding Constellar Interfaces and IDBI Bank and Exult software applications from the foreign entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, contrary to counsel's assertions, mere familiarity with an organization's product, process or service, such as knowledge of its "Connector" technology, "Constellar Interface," and IDBI Bank and Exult software applications does not constitute special knowledge under section 214(c)(2)(B) of the Act. While the petitioner claims that the beneficiary's experience with the organization includes intimate familiarity with the foreign entity's offshore operations and proprietary products, including "connector technology," and intimate familiarity with client's software development projects gained while working on the projects during the offshore phrase, this statement alone is not indicative of specialized knowledge capacity. In addition, although the petitioner contends that the beneficiary will be integral as an onsite staff member, and will continue to utilize the offshore project artifacts, tools, and methodologies for providing the remaining project tasks, this claim is insufficient to establish that the beneficiary possesses specialized knowledge or will be performing tasks that require specialized knowledge. The record does not demonstrate that the tasks described are not common to all technical consultants in the computer software application and development field. The described duties do not require advanced expertise or establish that the beneficiary possesses a special knowledge of the organizations functions and software application systems. Further, the petitioner states that the onsite tasks will consist of business requirement analysis, technical architecture requirements analysis, high-level design, and post delivery implementation and support services. There has been no evidence submitted to establish that the tasks are so intricate that they require the services of one who possesses specialized knowledge in the field. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.* It appears that the description given is common to all computer firms in the software development business and does not differentiate the beneficiary from that of any other person employed as a technical consultant. *Cf.* U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2004-05 edition, "Computer Programmer, Systems Analysts, Dababase Administrators, and Computer Scientists" (online at http://www.bls.gov/oco/ocos042.htm, ocos110.htm, and ocos268.htm). In addition, by the petitioner's own admission, it can be reasonably concluded that other vendors of middleware or hub products also possess expertise in the "connector" or interface technology and products field.

In the instant case the petitioner has demonstrated that the beneficiary is skilled and familiar with connector technology techniques and applications that are undoubtedly beneficial to the organizations offshore and onshore processes. However, the plain meaning of the term "specialized" knowledge is knowledge or expertise beyond the ordinary in a particular field, process, or function. *See* section 214(c)(2)(B) of the Act. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The evidence fails to establish that the

following knowledge, training and skills are unique assets, possessed only by employees of the U.S. and foreign entities: Microsoft applications, and applications using Wml, WmlScript, A.S.P., JavaScript, VBScript, VB6.0, Unix, IIS4.0, Com, M.T.S., Uml, PeoloeTools, SQL-Server (6.5), (7.0), Oracle 7.3, 8.0, Crystal Report 7.0, and People Soft. Furthermore, the petitioner notes that a training division has been built in India to accommodate training personnel to effectively assist clients, which indicates that the specialized knowledge training is company-wide training rather than the training of only a handful of employees. The petitioner notes that it maintains a regular rotational program to assure that all key personnel are in touch with the most current techniques and procedures of all of the various aspects of the organizations procedures and services. The petitioner also stated that 13 percent of the consultants in India and 8 percent of the consultants in the United States possess specialized knowledge acquired through training and experience at the foreign entity. However, the evidence does not establish the total number of consultants employed by the organization in relation to the percentage of employees trained, nor does the record reflect who among the employees and consultants are considered "key personnel."

In addition, the record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product, procedures, or its application in U.S. and international markets. Counsel contends that the beneficiary's combined knowledge of the organization's proprietary products, namely Legacy platforms and interface or "connector" technology products, is significant and qualifies as "specialized knowledge." Contrary to counsel's contention, a mere knowledge of an organization's proprietary products does not connote "special" knowledge where the individual is one of many employees privy to such information. Furthermore, any experienced programmer analyst would necessarily possess knowledge of its company's proprietary products in order to function efficiently in the field. The beneficiary's employment experience with the foreign organization may have given him knowledge that is useful in performing his duties as a technical consultant, but it cannot be the case that any useful skill is to be considered to constitute special or advanced knowledge. One's knowledge of "Connector" technologies is not, of itself, "specialized knowledge." Contrary to counsel's assertions, the beneficiary's knowledge of the company product, or of the processes and procedures of the foreign company, has not been shown to be substantially different from, or advanced in relation to, that of any technical consultant of any software development firm. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.* Without supporting documentation, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. *See* section 214(c)(2)(B) of the Act. Here, the evidence demonstrates that the beneficiary possesses the skill required to work as a technical consultant dealing with various software interface applications, not a special knowledge of the petitioner's processes and procedures. Furthermore, although the petitioner's approach to software engineering processes may be unique or specialized, the beneficiary's application of that process will not necessarily qualify as advanced. In addition, the computer software application training appears to be readily available within the organization. There has been no independent documentary evidence submitted to establish that any computer technician within the United States cannot be trained to perform tasks performed by the beneficiary within a reasonable period of time so as not to negatively effect the overall operations of the U.S. and foreign entities.

Furthermore, the petitioner's description of the beneficiary's job duties fails to establish that an individual who possesses "specialized knowledge" is necessary for the proposed technical consultant position in the

United States. The following job duties are common duty descriptions within the computer software application field and thus appear not to rise to the level of specialized knowledge: design, develop, and provide customized implementation for clients' systems; obtain clients' sign off; system testing; and provide user training to clients. Additionally, the qualifications necessary for the beneficiary to successfully perform his job as a technical consultant appear to be standard for the industry. Cf. *Occupational Outlook Handbook, supra.* The petitioner asserted that the maintenance and production support of the technological applications require a high degree of skill, expertise, knowledge and relevant experience, and that the organization has set up training facilities to accommodate these requirements. It is thereby reasonable to conclude that the beneficiary's educational background and claimed in-house training is equivalent to that of other technical consultants, and not, per se, uncommon or unique. In addition, there has been no degree, certificate of completion, or course transcripts submitted as evidence to establish that the beneficiary received specialized training from the foreign entity. Accordingly, the petitioner has not established that the beneficiary would be employed in a specialized knowledge position or that the position requires an individual with specialized knowledge.

On appeal, counsel also referred to a 1988 INS memorandum as a guide for interpreting the statutory definition of specialized knowledge. *See* Memo, Norton, Assoc. Comm., Examinations (Oct. 27, 1988), *reprinted in 65 Interpreter Releases 1194 (Nov. 7, 1988).* In the memorandum, the Commissioner noted four characteristics of employees with "specialized knowledge," which counsel uses to emphasize that the beneficiary's training and experience in the software development and maintenance processes establishes that the beneficiary's knowledge differs from that generally found in the computer software application and development industry. The beneficiary's ability to execute software development and maintenance processes does not by itself establish that the beneficiary's knowledge is different from that generally found in the industry. In *Matter of Penner,* the Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." 18 I&N Dec. 49 (Comm. 1982). 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 just the "key" personnel that Congress specifically intended. With regard to counsel's reliance on the 1988 Associate Commissioner's memorandum, the memorandum was intended as a guide for employees and will not supercede the plain language of the statute or the regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. 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 alien's field of endeavor.

While the AAO acknowledges that the specialized knowledge classification is not solely for those "relatively rare employees with unusual knowledge," the legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court noted that the legislative history demonstrated a concern that the L-1 category would become too large: "The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service." *Id.* at 16 (citing H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815). The court stated, "[I]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to 'key personnel' and executives." *1756, Inc.*, 745 F. Supp. at 16.

Similarly, in *Matter of Penner*, the Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." 18 I&N Dec. 49 (Comm. 1982). 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. *Id.* at 53. In accordance with the statute and the legislative history, it would be inappropriate to expand the visa category to allow the entry of any personnel who already had knowledge of a petitioner's operations.[1]

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

---

[1] The precedent decision *Matter of Penner* pre-dates the 1990 amendment to the definition of "specialized knowledge." Other than deleting the former requirement that specialized knowledge had to be "proprietary," however, the 1990 amendment did not greatly alter the definition of the term. In particular, the 1990 Committee Report does not even support the claim that Congress "rejected" the INS interpretation of "specialized knowledge." The 1990 Committee Report does not criticize, and does not 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. Rep. No. 101-723(I), *supra*, at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became § 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that *Matter of Penner* remains useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.