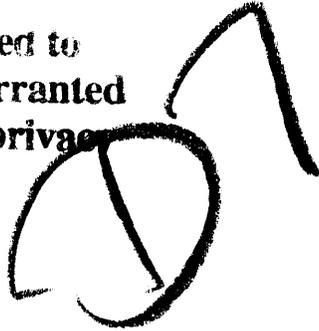


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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: SRC 04 020 54258 Office: TEXAS SERVICE CENTER Date: MAY 19 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

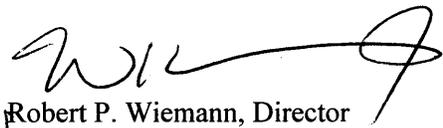
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 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 is engaged in the design, manufacture, and sale of semiconductor products. It seeks to temporarily employ the beneficiary as an associate engineer in the United States, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel submits a brief and asserts: (1) that the director based her denial on a misunderstanding of the petitioner's business, and therefore made incorrect assumptions about the duties and requirements of the beneficiary's proposed employment in the United States; (2) that the denial is based on information not submitted by the petitioner; and, (3) that the denial misconstrues the requirements for specialized knowledge as outlined in a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum.

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.

In a letter submitted with the petition, the petitioner explained that the beneficiary had been employed for six years in the foreign company, and most recently, held the position of associate engineer.<sup>1</sup> While in this position, the beneficiary’s job responsibilities included:

Migrated digital cell libraries from cadence 442 version to cadence 446 version. Assisted [the petitioner’s] design teams in migrating their designs to the 446 version of cadence. Support lead in team with primary job responsibility to address the tickets filed by [the petitioner’s] designers and track them to closure. Development lead for MSL 200 (Mixed Signal Logic) library. Responsible for maintaining Quality Control (QC) check-list to be in sync with [the petitioner’s] PDP (Product Development Process). Developed the libQcare (LIBRARY QC And Release) system. Worked on defining the Input Output (IO) buffer layout architecture for the MSL 250 IO library. Development lead for the MSL 215 library.

The petitioner also stated that as an associate engineer in the U.S. entity, the beneficiary would:

Utilize specialized knowledge gained at [the foreign company] regarding the design, development, and preparation of data for [the petitioner’s] digital cell libraries and Pyramid design flow system. Responsible for further development and support of cell libraries for use within the Digital Cell Library group of [the foreign company’s] Mixed Signal Technology Center . . . . Support U.S. technology develops in developing library data, and draw on experience to assist design engineers in the completion of design through the flow. Provide individual technical contribution toward meeting project goals. Provide leadership and guidance to team members. Implement and adhere to [the petitioner’s] quality standards and support activities, tracking them to closure.

In a request for evidence, the director outlined the requirements necessary for establishing the possession of specialized knowledge, specifically referring to a 1994 INS memorandum. Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9,

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<sup>1</sup> It is unclear from the petitioner’s letter how long the beneficiary has been in the position of associate engineer in the foreign company. The petitioner stated that the beneficiary held the position for at least six months, yet indicated in a separate letter that the beneficiary has been in this position for approximately three years.

1994). The director requested that the petitioner provide the following: (1) evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished, and not generally known by practitioners in the field; (2) evidence that the beneficiary's knowledge of the company's processes and procedures is apart from the basic knowledge possessed by others; (3) evidence relating to unique methodologies, tools, programs or applications used by the petitioner; (4) an explanation of the equipment, system, or product of which the beneficiary has specialized knowledge; (5) a letter from the beneficiary's foreign employer substantiating the beneficiary's employment abroad; (6) documentation detailing the manner in which the beneficiary gained his specialized knowledge, including an explanation of any completed training courses and certification of completion; (7) the number of workers employed in a position similar to the beneficiary, and whether they received comparable training; (8) the beneficiary's resume; (9) copies of the foreign and U.S. companies' organizational charts; and, (10) a list specifically identifying the number of specialized knowledge employees transferred to the U.S. entity within the last twelve months.

The petitioner submitted a lengthy response. As the petitioner's response is part of the record, it will not be repeated in its entirety herein. The petitioner explained that the beneficiary's responsibilities in his "specialized role" in the U.S. entity include:

to design and develop digital cell libraries, prepare data for cell libraries, and have an overview of [the petitioner's] Pyramid design flow system. In addition, the incumbent is responsible for developing and supporting cell libraries within the Digital cell library group of [the foreign company's] Mixed Signal Technology Center; individual technical contribution towards meeting project goals; technical leadership and guidance to team members; implementing and adhering to quality standards, involvement in various support activities and tracking them to closure; supporting the development of [the petitioner's] digital cell libraries for the Pyramid design flow; working with the Technology developers in developing the library data and working with the design engineers in completing a design through the flow.

With regard to the beneficiary's specialized knowledge and his application of such in the proposed position, the petitioner stated:

[The beneficiary] possesses an advanced level of knowledge of our products and processes within our global organization and throughout the semiconductor industry that is uncommon, and not generally found within other similarly related professionals in the industry. He has noteworthy knowledge of cell library development for [the petitioner's] Pyramid design flow methodologies, as well as digital cell libraries.

\* \* \*

[The beneficiary] is an expert in the design, development, and productization [sic] of digital cell libraries, which are the key elements required for [the petitioner's] mixed signal technology processes. Within the past three (3) years, he has worked as a development lead for [the petitioner's] MSL 200 and MSL 215 libraries and on defining the Input Output (IO) buffer layout architecture for the MSL 250 IO library. He has been responsible for maintaining Quality Control (QC) check-list to ensure in sync with [the petitioner's] PDP (Product Development Process) and has developed the libQcare library QC and release system.

[The beneficiary] is the ideal candidate for this assignment based on his in-depth knowledge of [the petitioner's] cell library development process and technology data preparation for the back end place and route tools for use by [the petitioner's] designers. As the library data for the current set of tools is being prepared by [the beneficiary's foreign employer], the responsibility of preparation of library data for the new set of tools (Pyramid design flow) also remains with this team. **The cell libraries productize [sic] by [the beneficiary's] team in India are used by [the petitioner's] designers worldwide.** (emphasis in original)

\* \* \*

[The beneficiary's] knowledge of [the petitioner's] digital library design for [the petitioner's] Pyramid design flow is apart from the elementary or basic knowledge possessed by others in the industry, and thus for an incumbent to satisfactory [sic] perform in the offered role, the person must possess specialized knowledge of [the petitioner's] operations and procedures. This knowledge, in turn, enhances our overall products and services in the global market thereby enabling our US operations to remain competitive in the economic marketplace. Given the complexity of [the petitioner's] operations and related products and services, prior advanced knowledge and experience with [the petitioner] is critical to the assignment.

Finally, the petitioner noted that it was unable to provide documentation requested by the director describing the petitioner's methodologies, tools, programs, or applications, as it is confidential "within the competitive marketplace."

The director determined that the record did not establish employment of the beneficiary in a position that requires specialized knowledge, nor did it establish that the beneficiary possesses specialized knowledge. The director noted that the job duties outlined by the petitioner "do not appear to be significantly different from those of any other Associate Engineer in [the petitioner's] firm . . . ," therefore, the position of associate engineer does not warrant the expertise of someone possessing specialized knowledge. Additionally, the director stated that although the beneficiary's resume indicates "impressive" work experience, it "appears to be common among those who are similarly employed in the computer consulting industry." Finally, the director concluded that because the beneficiary works with other team members on a project, the beneficiary "does not have an exclusive basis of knowledge in the companies [sic] systems or services," as the knowledge is common among team members. The director consequently denied the petition.

Counsel submits a lengthy brief on appeal in support of the petitioner's assertions that the beneficiary possesses specialized knowledge, and that the intended employment requires specialized knowledge. Specifically, counsel refers to the 1994 Associate Commissioner's memorandum and asserts:

- [The beneficiary] possesses knowledge that is valuable to [the petitioner's] competitiveness in the marketplace. His key expertise and in-depth knowledge regarding [the petitioner's] MSL215 cell library is critical to migrating the mixed signal logic integrated circuits to the Pyramid design flow system. This migration will make the integrated circuit products more competitive in the marketplace, and is critical to maintaining the state-of-the-art integrated circuit systems that [the petitioner] offers to its customers.

- [The beneficiary] possesses specific knowledge about [the petitioner's] MSL215 cell component of the mixed signal logic integrated circuits that is not found in the industry because these are internally developed products.
- [The beneficiary] possesses specialized knowledge that has been used abroad in a capacity involving significant assignments that have enhanced the employer's productivity, competitiveness, image or financial position. The state-of-the-art multimillion transistor chips include the digital cell libraries designed and developed internally. [The beneficiary] possesses in-depth knowledge and narrowly held expertise regarding [the petitioner's] MSL215 cell library, a critical element of these multimillion transistor digital cells.
- [The beneficiary] clearly possesses his advanced specialized knowledge about [the petitioner's] state-of-the-art products because he has prior experience with [the petitioner] in which he has been the Lead Developer of digital cell libraries, particularly [the petitioner's] MSL215 cell library.
- [The beneficiary] possesses knowledge of a product that cannot be easily transferred or taught to another individual. These cell libraries are extraordinarily complex, and Lead Developers have the most comprehensive knowledge about cell components of the integrated circuits. As a result, [the beneficiary's] knowledge is very narrowly held by only a select group of employees at [the petitioning organization].

Counsel also notes that, pursuant to the guidelines in the 1994 INS memorandum, specialized knowledge need not be narrowly held throughout an organization in order to be considered "advanced." Counsel, therefore, refutes the director's determination that the beneficiary's knowledge is not advanced or uncommon because he is one of three associate engineers working together on a particular project. Counsel states that as the lead developer on the project, the beneficiary's "comprehensive and advanced technical knowledge" is "narrowly held" in the organization, and is essential in guiding the petitioner's technology developers. Counsel likewise claims that "the technology developers rely on the comprehensive knowledge held by the cell library developers to guide the development" of the petitioner's products. Moreover, counsel explains that "advanced level knowledge of specific cell libraries is held by different individual Associate Engineers for different particular cell designs;" the beneficiary's "advanced knowledge" pertains to the MSL215 cell library.

Additionally, counsel claims that the intended position in the U.S. entity requires specialized knowledge. Counsel explains that the U.S. company is presently changing its design process to improve the productivity of its mixed signal integrated circuits. Counsel asserts that this transition "requires the services of an individual who possesses advanced level and comprehensive knowledge about the existing cell libraries." Counsel further contends that:

The Associate Engineer position offered in the U.S. requires advanced specialized knowledge of the highly complex, comprehensive nature of cell libraries for a specific cell component of a mixed signal integrated circuit, the MSL 215. The advanced level of knowledge possessed by the Lead Developer of the cell library of this particular cell component possesses the required comprehensive and advanced level knowledge about the complex technical data for this cell. This is the type of advanced, in-depth, narrowly held specialized knowledge that is

essential for an efficient and seamless transition of this particular cell library to the Pyramid design flow methodology in the U.S.. It is critical that this process occur efficiently as possible . . . .

Counsel also asserts on appeal that the director's denial of the petition was based on an incorrect interpretation of the petitioner's business, and an erroneous review of the record. Counsel explains that the director incorrectly determined that the petitioner is operating as a computer-consulting firm, rather than as a manufacturer of semiconductor products. Counsel contends that the director, therefore, "made incorrect assumptions regarding the nature of the advanced and uncommon specialized knowledge gained by [the beneficiary] with [the foreign company] . . . ." In addition, counsel states that the director relied on evidence that had not been submitted by the petitioner. Specifically, counsel notes that the director referred to a resume of the beneficiary, which identified projects on which the beneficiary worked. Counsel claims that the director "[drew] inferences that are not supported by the record."

On review, the record does not contain sufficient evidence to establish 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 has provided ample description of the beneficiary's intended employment in U.S. entity, and his responsibilities as an associate engineer. However, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary has noteworthy and in-depth knowledge of cell library development, and "is an expert in the design, development, and productization [sic] of digital cell libraries." The petitioner asserts that the beneficiary possesses specialized knowledge as a result of his six years of work experience in the foreign company, including a period in which he functioned as development lead for MSL200 and MSL215 libraries.<sup>2</sup> Counsel also claims on appeal that the petitioner's associate engineers possess advanced knowledge for a particular cell design, and that the beneficiary's advanced knowledge pertains to the MSL215 cell library. The petitioner, however, offers no explanation as to the educational or work qualifications necessary for a development lead, or the responsibilities of the position. Nor does the petitioner provide documentation that the beneficiary received training or work assignments focused specifically on the MSL215 cell library. While the petitioner and counsel assert that the beneficiary is an "expert" with specialized knowledge, the lack of specificity pertaining to the beneficiary's work experience and training, particularly in comparison to others employed by the petitioner and in this industry, fails to distinguish the beneficiary's knowledge as specialized. Without documentary evidence to support the claim,

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<sup>2</sup> Again, it is unclear how long the beneficiary functioned in the foreign company as the development lead. The petitioner has indicated periods both of six months and three years. 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).

the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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)).<sup>3</sup> 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 produce a specialized product, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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. 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). 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.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

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<sup>3</sup> 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.

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's only contention that the beneficiary's knowledge is more advanced than other associate engineers is counsel's reference on appeal that each associate engineer in the petitioning organization possesses specialized knowledge for a particular cell library. Again, the petitioner has not provided any information pertaining to the other associate engineers employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other employees. The lack of evidence in the record makes it impossible to classify the beneficiary's knowledge of the MSL215 cell library as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). While it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Moreover, 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). 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 further 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 all employees with specialized knowledge, but rather to "key personnel" and "executives.")

The petitioner also asserted that the beneficiary's knowledge is specialized because it "enhances [the petitioner's] overall products and services in the global market thereby enabling [the] US operations to remain competitive in the economic marketplace." Additionally, in reference to the 1994 INS memorandum, counsel claims on appeal that the beneficiary's knowledge is valuable to the petitioner's productivity, competitiveness, image and financial position, and is critical to maintaining the integrated circuit systems offered by the petitioner. While the

beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. The AAO notes that, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge in the field of semiconductors, and specifically MSL215 cell libraries, is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job in the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel;" nor does it establish employment in a specialized knowledge capacity.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. Counsel contends that a change in the petitioner's design process necessitates "the services of an individual who possess advanced level and specialized knowledge about the existing cell libraries." Counsel also contends that "narrowly held, specialized knowledge" is essential. While the position of associate engineer may require a comprehensive knowledge of the existing cell libraries, there is no documentation, other than counsel's assertion, that an associate engineer must possess advanced, "specialized knowledge" as defined in the regulations and the Act. Again, the assertions of counsel do not constitute evidence. *Matter of Obaignena, supra*; *Matter of Ramirez-Sanchez, supra*.

Finally, counsel contends that the director misunderstood the nature of the petitioner's business, and made incorrect assumptions about the job duties of the proposed position. Counsel also asserts that the director based his decision on information not provided by the petition. The AAO acknowledges that in his decision, the director identified the petitioning organization as a computer technology-consulting firm, and makes reference to evidence, specifically, the beneficiary's resume, which is not part of the record. While counsel contends that the director's inaccurate statements resulted in an incorrect denial, the decision contains sufficient evidence that the director properly reviewed the record. Of particular importance is the director's consideration and recitation in his decision of the beneficiary's proposed job duties, including focusing on the MSL215 cell library and Pyramid design flow system, and the beneficiary's work with the company's technology developers and design engineers. Therefore, although the director incorrectly stated characteristics of the petitioning business, he properly considered the relevant facts in his denial of the petition. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The director satisfied this burden.

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.*, 745 F. Supp. 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. Accordingly, the director’s decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.