U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 070 51291 Office: NEBRASKA SERVICE CENTER Date: OCT 21 2004

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

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prevent clearly unwarranted
invasion of personal privacy

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

The petitioner is engaged in the business of management and technology consulting. It seeks to temporarily employ the beneficiary as a team lead 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 the requisite specialized knowledge nor that the intended employment required specialized knowledge.

The petitioner subsequently filed a motion to reconsider with an appeal in the alternative. 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 that the denial: (1) was based on a misunderstanding of the highly technical duties of the beneficiary's job; (2) applied an obsolete standard for determining whether the beneficiary possessed specialized knowledge and 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; and (3) appears inconsistent with recent Nebraska Service Center policy guidance. In addition, counsel submits an expert opinion which allegedly establishes that the beneficiary possesses the requisite specialized knowledge.

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.
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> (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.
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> (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 stated that the foreign company has employed the beneficiary for over four years. The petitioner further explained that the beneficiary, who received a Bachelor of Science degree in Economics in April of 1997, began working for the foreign company in June of 1997 as an analyst. In March of 2000, the beneficiary was promoted to the position of team lead, which he currently holds today. The petitioner alleges that based on his education and experience working in the foreign company, the beneficiary has an advanced level of knowledge in two of its proprietary systems, namely, TRIUMPH and Business Integration Methodology (BIM). Additionally, the petitioner states that the beneficiary's job duties are highly technical and specialized. In an effort to explain these duties, the petitioner states:

> [The beneficiary] developed and enhanced his advanced expertise with our proprietary TRIUMPH system through several sophisticated client maintenance and development projects. During the TRIUMPH system's initial development for this client, [the beneficiary] served as a technical expert for the TRIUMPH Host Development Support (HDS) Team. In this capacity, he was responsible for providing support to the development and infrastructure needs of the TRIUMPH team by resolving all problems and issues encountered with TRIUMPH development tools, access, and connectivity. [The beneficiary] was responsible for establishing various infrastructure processes to improve utilization of TRIUMPH system resources and conducting training sessions to introduce this knowledge to other Manila personnel.

The petitioner further stated:

> Due to [the beneficiary's] over three years of specialized experience with [the petitioner's] proprietary TRIUMPH system, and his advanced knowledge of our BIM processes, we believe he is ideally qualified to perform the duties of Team Lead for this important client implementation project in the United States.

Additionally, as a team lead in the U.S. entity, the petitioner stated that the beneficiary would serve as a key member of the U.S. project team for the TRIUMPH system, and would "be responsible for high-priority system maintenance activities of the Accounts Receivable processing system." Specifically, the petitioner states:

> Utilizing his advanced knowledge of the TRIUMPH system's Accounts Receivable processing system, [the beneficiary] will serve as a member of the Functional Event Driver (FED) team. [The beneficiary] has worked on our Manila offshore TRIUMPH systems team for over three years, working on both the production and development phases of the project. [The beneficiary] has gained advanced knowledge of the proprietary TRIUMPH system through his experience with the TRIUMPH project in the Philippines. Serving on the U.S. project team, [the beneficiary] will analyze, design, and program FED modules that are impacted by requirements and/or change controls as well as provide support for the application during implementation. He will rely on his advanced knowledge of TRIUMPH gained while working as Team Lead for our subsidiary in the Philippines to provide technical expertise to the FED interface contacts in order to resolve any queries or problems involved with the system. [The beneficiary] will also serve as the first point of contact for business partners and interfacing systems groups and act as principal liaison between the U.S. and Manila teams. As the TRIUMPH system is a proprietary system designed and built by [the petitioner], our Functional Event Driver team has exclusive contractual responsibility for TRIUMPH system maintenance and upgrades.
>
> [The beneficiary] will also utilize his expertise in [the petitioner's] proprietary Business Integration Methodology (BIM) to complete this specialized assignment. BIM is [the petitioner's] framework for driving and sustaining change in an organization in order to create value. It is our expression of how to plan, deliver, manage, and sustain organizational change to create value. There are four phases: Planning, Delivering, Operating, and Managing, which are summarized as follows: In the Planning phase, implementable strategies and solutions are developed, plans found on superior strategy are established and business architecture is aligned with strategy. In the Delivering phase, plans are put into action on [sic] and new business capabilities are deployed. In the operating phase, we continuously provide service to achieve and sustain the benefits of the business capability. In the Managing phase, we direct and monitor the change initiative to achieve improved business results.

Finally, the petitioner states:

> A person can only gain knowledge of BIM through experience with [the petitioner] and [the beneficiary's] knowledge of BIM has been obtained through his experience with [the petitioner] in highly specialized roles directly related to this temporary assignment in the U.S.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a request for evidence was issued on January 7, 2003, which specifically requested evidence that the beneficiary possesses specialized knowledge of the petitioner'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 director advised that acceptable evidence included but was not limited to: (1) a description of the beneficiary's day-to-day duties abroad and in the intended U.S. position, including information on the computer languages in which the beneficiary is trained as well as information on the composition of the team on which the beneficiary will serve; (2) evidence of training that the beneficiary

has received related to the position, including certificates, personnel records, and/or letters from authorized representatives verifying such training; (3) an overview of the petitioner's organization; namely, a description of all positions employed by the entity accompanied by an organizational chart; (4) evidence that TRIUMPH and BIM are proprietary systems; and (5) evidence that the beneficiary has an advanced and noteworthy knowledge of the BIM and TRIUMPH systems.

The petitioner submitted a detailed response accompanied by documentary evidence, which included: (1) a document entitled "Specialized Skills Descriptions"; (2) a document entitled "How to Use the Business Integration Methodology"; (3) a copy of the Memorandum of [redacted] Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994); (4) a copy of the petitioner's Annual Report for 2001; and (5) a list of the petitioner's subsidiaries. In response to the director's request for additional evidence and explanation of the beneficiary's specialized knowledge, counsel for the petitioner described the TRIUMPH system and its primary applications. Additionally, counsel addressed the issue of the beneficiary's experience and training, and stated:

> Since September 1999, [the beneficiary] has developed and enhanced his advanced expertise with regard to [the petitioner's] proprietary TRIUMPH system through several sophisticated client maintenance and development projects. During the TRIUMPH system's initial development phase for American Express, [the beneficiary] served as a technical expert for the TRIUMPH Host Development Support (HDS) Team. In this capacity, he was responsible for providing support to the development and infrastructure needs of the TRIUMPH team by resolving all problems and issues encountered with TRIUMPH development tools, access, and connectivity. [The beneficiary] was responsible for establishing various infrastructure processes to improve utilization of TRIUMPH system resources and conducting training sessions to introduce this knowledge to other Manila personnel.
>
> Utilizing his advanced and specialized knowledge of [the petitioner's] TRIUMPH Accounts Receivable processing system, [the beneficiary] will serve as a member of the Functional Event Driver (FED) team. [The beneficiary] has worked on [the petitioner's] Manila offshore TRIUMPH systems team for over three years, working on both the production and development phases of the project. Serving on the U.S. project team, [the beneficiary] will analyze, design, and program FED modules that are impacted by requirements and/or change controls as well as provide support for the application during implementation. He will rely on his advanced knowledge of TRIUMPH gained while working as Team Lead in the Philippines to provide technical expertise to the FED interface contacts in order to resolve any queries or problems involved with the system. [The beneficiary] will act as principal liaison between the U.S. and Manila teams. Further, [the beneficiary] will utilize his specialized knowledge and understanding of TRIUMPH development issues to transfer knowledge to the U.S. based team, which will, in turn, ensure successful implementation of this system for American Express.

Counsel for the petitioner further stated:

> [The petitioner's] employees are chosen for temporary assignments in the U.S. either due to their prior experience with the client or due to similar technology product development experience that directly relates to the U.S. portion of the client project. The types of services required by each of [the petitioner's] clients are determined by the contracts

> entered into between [the petitioner] and the particular client. The contractual relationship between [the petitioner] and its clients ultimately determines the types and number of personnel required to complete the project successfully within the established parameters. Accordingly, [the petitioner] has determined that the temporary services of a small number of product and project experts, such as [the beneficiary], are needed to fulfill its obligations and, as the requisite expertise can only be acquired through specific experience with this project, an analysis of similar positions and/or training is not relevant to a determination of specialized knowledge.

Finally, in response to the director's specific request for evidence that the beneficiary's knowledge is not merely general knowledge, counsel addressed the provisions set forth in the 1994 Puelo Memorandum. Specifically, counsel asserted that the examples contained therein strongly support a conclusion in favor of determining that the beneficiary possesses specialized knowledge. Counsel cited several examples and attempted to equate them to the current situation of the beneficiary. Counsel asserted that the beneficiary's proprietary knowledge, coupled with the potential hardship on the U.S. entity should outside hiring become necessary, are the key factors to be considered in this matter and have been adequately proven. Counsel concluded that the petitioner had met its evidentiary burden and a favorable decision should be rendered.

The director determined that the record neither established that the beneficiary possesses specialized knowledge, nor that the intended position in the U.S. is one that requires specialized knowledge. The director specifically noted that the documentation provided in response to the request for evidence did not support such contentions. The director stated that although the beneficiary appears to have a working knowledge of the petitioner's systems, the evidence submitted did not establish that the beneficiary's knowledge was "uncommon, noteworthy, or distinct." The director concluded that the "simple experience and familiarity" the beneficiary gained in working for the petitioner did not constitute specialized knowledge as contemplated by the regulations, and consequently denied the petition.

On appeal, counsel submits a detailed brief in support of the petitioner's assertions that the beneficiary possesses specialized knowledge. The three points raised on appeal are that: (1) the director misunderstood the highly technical duties of the beneficiary's job; (2) the director applied an obsolete standard for determining whether the beneficiary possessed specialized knowledge and that the denial misconstrues the requirements for specialized knowledge as outlined in the 1994 Puelo Memorandum; and (3) the director's decision is inconsistent with recent Nebraska Service Center policy guidance. In addition to these arguments, counsel subsequently submitted an expert opinion prepared by [redacted] a professor of Computer Science and Computer Engineering at the University of North Carolina at Charlotte, in support of the beneficiary's claim of possessing specialized knowledge.

In support of the claim that the beneficiary's duties are highly technical, counsel asserts that the petitioner has been maintaining the TRIUMPH system since October of 1999, and that its Manila-based team has completed over 531,000 hours of new development and enhancement for American Express on the TRIUMPH project. Counsel states:

> Due to the size and complexity of the system, [the petitioner] has found that it takes a TRIUMPH IT specialist a minimum of 12 and up to 24 months to be fully knowledgeable on TRIUMPH application skills and functionalities, and fully understand how American Express utilizes the TRIUMPH system.

Counsel concludes this line of reasoning by alleging that the beneficiary's "specialized knowledge of the TRIUMPH system and [the petitioner's] application development processes has provided him with an advanced level of expertise of this system," thereby qualifying him for the temporary U.S. assignment.

Counsel's next assertion is that the director applied an obsolete standard in determining whether the beneficiary possessed specialized knowledge as contemplated by the Act. Counsel asserts that the director's referral to the term "skilled worker" in his decision indicates his reliance on *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), which counsel alleges is erroneous in that the standards in *Matter of Penner* have been superceded by the revision of the Act in 1990. Specifically, counsel states:

> [CIS'] decision implies that any worker with minimal training and an appropriate degree could perform the duties for the position. However . . . the petitioner believes that it takes a person at a minimum of 12 to 24 months of specific TRIUMPH experience to obtain the requisite level of expertise to perform the job's duties. Even assuming a minimal training period, a twelve-month delay in completing this important internal project for American Express would result in potentially catastrophic "economic inconvenience" to [the petitioner].

Finally, counsel alleges that in addition to the application of an obsolete legal standard in determining the beneficiary's qualifications, the director's request for evidence and decision contained requests and conclusions that directly contradicted a recent policy memo issued by the Nebraska Service Center. In support of this assertion, counsel cites numerous examples of the language employed by the director, and contrasts these examples with language from the policy memo which directly contradicts their validity. Counsel concludes by stating that the director's decision is "contrary to the statute and established [CIS] policy and merits reconsideration."

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge, nor that the intended position requires an employee with 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 a thorough description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a team lead. However, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner, through counsel, repeatedly states throughout the record and again on appeal that the beneficiary performs a multitude of complex and highly technical job duties for the petitioner, the nature of which are not fully understood by CIS.[1] Counsel for the petitioner continually asserts that the beneficiary possesses specialized knowledge as a result of his over four years of experience, first as an analyst and eventually through his current position as a team lead, and that such knowledge is far beyond that commonly found throughout the industry. Counsel further alleges that the time the beneficiary devoted solely to the TRIUMPH project during this period has further developed his specialized knowledge. The record prior to adjudication, however, is devoid of evidence that would corroborate the contentions of

[1] The petitioner's response to the director's request for evidence submits a description of the beneficiary's duties that is virtually identical to the one submitted in support of the petition.

counsel. Without documentary evidence to support these claims, 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).

Although the petitioner submitted documentary evidence discussing the proprietary nature of its TRIUMPH and BIM systems, the petitioner failed to explain how these documents established or supported the claimed qualifications of the beneficiary. The director's request for evidence specifically requested evidence of "the training provided by the organization to the beneficiary, beginning with initial new employee orientation to the present." The director's request advised the petitioner that examples of acceptable evidence included copies of certificates, personnel records, and/or letters from authorized representatives of the petitioner attesting to such training. Although specifically requested by the director, the record contains no evidence whatsoever of the beneficiary's training, experience, daily duties, or level of expertise. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the petitioner. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, counsel urges the AAO to accept her uncorroborated assertions that the beneficiary possesses specialized knowledge. As previously stated, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

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' 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.

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[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.

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 specialized service, 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.*, "[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.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's only contention that the beneficiary's knowledge is more advanced than other software engineers is its assertion on appeal that a person requires at least twelve to twenty-four months of training to be fully knowledgeable on TRIUMPH application skills, and fully understand how American Express utilizes the TRIUMPH system.[3] Counsel further alleges that since the beneficiary possesses over three years of experience working with the TRIUMPH system, he is therefore overly qualified and thus possesses the requisite specialized knowledge. Again, the petitioner has not provided any information pertaining to the duties and training of the beneficiary, or of the other software 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 tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of the TRIUMPH system 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). The claim that the beneficiary has been employed by the petitioner for over four years and that more than three years of his employment was devoted primarily to work on the TRIUMPH system does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for a twelve to twenty-four month period.

Instead of providing relevant documentation in response to the director's request for evidence, the petitioner submitted a brief summary of the TRIUMPH program in a document entitled "Specialized Skills Descriptions," an overview of the BIM in a document entitled "How to Use the Business Integration Methodology," a copy of the 1994 Puelo Memorandum, a copy of the petitioner's annual report for 2001, and a list of the petitioner's subsidiaries. The annual report, the Puelo Memorandum, and the list of subsidiaries have no bearing on the beneficiary's specialized knowledge, because none of these documents address or support the claims made with regard to the beneficiary's qualifications. Similarly, the document entitled "Specialized Skills Descriptions" merely provides a generic overview of the TRIUMPH system, and fails to

[3] Although counsel alleged that the beneficiary's specialized knowledge pertained to both the TRIUMPH and BIM systems prior to adjudication, no further reference to BIM is made on appeal.

draw any connection between the TRIUMPH system and the level of expertise possessed by the employees who work on the TRIUMPH system. Finally, the document entitled "How to Use the Business Integration Methodology" simply discusses the manner in which BIM is utilized, and does not provide any insight on how this pertains to the beneficiary's alleged expertise.

Additionally, counsel asserts that the director's indirect allusion to *Matter of Penner* through the use of the term "skilled worker" was erroneous, since the precedent contained therein has been purportedly contradicted by the revisions made to the Act in 1990. The AAO finds this contention unpersuasive. A review of the director's decision shows that he did not rely on the holding in *Matter of Penner* in reaching his decision. Instead, the director merely referred to its language in attempting to identify and analyze the beneficiary's qualifications. As previously stated, CIS finds the language contained in *Matter of Penner* to be instructional in nature regarding the intended scope of the L1-B classification. *See supra* n. 2.

Moreover, in reference to the 1994 Puelo Memorandum, counsel claims on appeal that the beneficiary's knowledge is valuable to the petitioner's competitiveness, and is critical to preventing significant interruption of business and potential monetary penalties. 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. 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.

Additionally, 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." *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 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.").

In addition, the petitioner asserts that the director's request for evidence and decision employed language that has since been deemed inappropriate and unacceptable by CIS. Specifically, the petitioner encloses a copy of a memorandum prepared by [redacted], Supervisory Center Adjudications Officer for the Nebraska Service Center, dated January 27, 2002. The memorandum identifies several paragraphs routinely used in requests for evidence that have been deemed "burdensome" or "irrelevant to the classification." Counsel alleges that the key concepts of several of these burdensome and irrelevant paragraphs were employed by the director in both the request for evidence and decision in this case. However, the memorandum cited by counsel criticizes *specific* wording used by previous officers, and although it dismisses some requests as onerous and burdensome, its criticism focuses on the language employed and the manner in which the requests are presented, and not the actual evidence requested.[4] It does not prohibit, for example, a request for evidence that will establish a beneficiary's advanced knowledge of a petitioner's product or practices, but cautions officers to phrase their requests narrowly and in a direct manner. In this case, the allegations that some of the director's conclusions were based on burdensome or overly broad requests that were previously criticized in the Grabast Memorandum does not absolve the petitioner from its obligation to clearly establish its qualifications for the visa classification sought. The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish supporting evidence in support of its contentions. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden, and therefore the petitioner's reliance on the allegedly broad scope of the director's language in the request for evidence and decision as a basis to overturn the denial is misplaced and unpersuasive. 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).

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

Finally, the record contains an expert opinion prepared by [redacted] a professor of Computer Science and Computer Engineering at The University of North Carolina at Charlotte, in support of the claim that the beneficiary possesses the requisite specialized knowledge. This document was prepared on May 27, 2003, and was submitted to the AAO by counsel on or about June 6, 2003, accompanied by [redacted] *curriculum vitae* and a letter from the petitioner which further discusses the beneficiary's qualifications. The AAO notes that the appeal in this case was due on March 5, 2003, thirty-three days after the decision was entered in this matter. Counsel submitted a brief and additional evidence with the Form I-290B on February 25, 2003. She did not request additional time to submit evidence under 8 C.F.R. §103.3(a)(2)(vii), which provides:

> The affected party may make a written request to the [AAO] for additional time to submit a brief. The [AAO] may, for good cause shown, allow the affected party additional time to submit one.

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[4] The AAO notes one exception to this statement. Specifically, the request of organizational charts in petitions based on specialized knowledge, which the director requested in this case, was deemed inappropriate by the Nebraska Service Center. The AAO does not agree with this broad conclusion, since an organizational chart might support a finding that a beneficiary possesses specialized knowledge within the organization.

In this case, counsel for the petitioner did not request an extension in order to submit additional evidence, nor did the AAO grant such an extension. *See* 8 C.F.R. § 103.3(a)(2)(vii). Since the expert opinion and letter from the petitioner were submitted over three months after the deadline of the appeal, this evidence will not be considered.

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.