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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 04 031 53135 Office: TEXAS SERVICE CENTER Date: NOV 28 2005

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 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 development and licensing of multimedia software solutions for mobile communications devices. It seeks to temporarily employ the beneficiary as a software design 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 he would be employed in a specialized knowledge capacity in the United States.

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 that (1) the denial misconstrues the requirements for specialized knowledge as outlined in a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum; (2) the director did not consider all evidence submitted to establish that the beneficiary's claimed knowledge is "very uncommon" in the software industry; and (3) that the beneficiary qualifies as "key personnel" on the basis that he was chosen for transfer to the United States. In support of these assertions, counsel submits a brief and additional evidence.

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 an October 16, 2003 letter submitted with the petition, the petitioner explained that the beneficiary had been employed in the foreign company since March 2002 as a software design engineer, and has "acquired specialized knowledge about designing software to run on the OMAP platform and about [the petitioner's group's] design processes and business procedures." The petitioner further stated that the beneficiary has been working on the initial stages of Module 1 of the TI/PACE project in Pune, India" and is a "crucial member of the team working on the TI/PACE project." The petitioner provided the following description of the petitioner's projects with the foreign entity:

> [H]e is responsible for application development and the design and testing of real-time embedded system applications. [The beneficiary] has worked on numerous significant projects for [the foreign entity] including a project involving the application of an MPEG 1 Layer 3 (MP3) Decoder on an ARM based Processor. [The beneficiary's] responsibilities on this project included: studying standard documents and reference C code; coding C modules from the float point to the fixed point; and optimizing at C level and coding vital modules in assembly.
>
> [The beneficiary] also worked on a project involving the application of the MPEG 1 Layer 3 (MP3) Decoder on the TI-OMAP platform. On this project he was primarily responsible for porting the MP3 Decoder on the TI-OMAP (ARM) platform. In addition, [the beneficiary] contributed to a project involving the application of the MPEG 1 Layer 3 (MP3) Decoder on the Symbian Operating System. [The beneficiary] was responsible for porting the MP3 Decoder on the Symbian Operating System.

> [The beneficiary] was next assigned to a project involving the application of the MPEG 1 Layer 3 (MP3) Decoder on the TMS320C55x platform. On this project, his job duties including porting the MP3 Decoder on the TMS320C55x processor with calculation intensive modules coded in Assembly language.
>
> Further [the beneficiary] also worked on a project involving the AMR on WinCe. In this project, the AMR Encoder and Decoder were ported on the IPAQ 3950 that has a WinCe Operating System and Xscale processor. [The beneficiary] was primarily responsible for porting the AMR Encoder and Decoder on the IPAQ3950.
>
> [The beneficiary] also contributed to an effort involving MPEG 1 Layer 3 (MP3) Encoder Fix Point Code Development. On this project, [the beneficiary] was primarily responsible for developing Fix point code for the MP3 Encoder.
>
> During his work [with the foreign entity], [the beneficiary] has acquired a significant amount of specialized knowledge related to the design and testing of software in connection with the TI-OMAP platform. [The petitioner] now requires [the beneficiary's] presence in Dallas so that he can use his specialized knowledge to help [the petitioner] meet its obligations under the Professional Services Agreement with Texas Instruments.

With respect to the Professional Services Agreement, the petitioner explained as follows:

> [The petitioner's group] entered into a Professional Services Agreement. . . to help with the global launch of TI's flagship product, OMAP. . . .TI's OMAP platform delivers a comprehensive mix of scalable high-performance processors, re-usable software, and a comprehensive support network for a wide range of real-time, multimedia-rich products. . . .
>
> * * *
>
> Under the auspices of the . . .Professional Services Agreement ("PSA"), TI has contracted with [the petitioner] to validate TI's software running on OMAP platforms. This TI/PACE OMAP Multimedia Software Validation Project. . . .will enable both TI and its major customers to deliver stable products to the market

The petitioner also stated that as a software design engineer, the beneficiary would be a member of a team of engineers working on the second module of the project and provided the following description of his proposed duties:

> [The beneficiary] will be responsible for Assembly coding on DSP and ARM processors and Module level testing. He will work on projects involving test case generation, test scripting and error logging and the development of bug tracking mechanisms. [The beneficiary] will be primarily responsible for the generation of the Test sequence for the system and the implementation of scalable designs with load balancing for parallel processing architecture.

> In addition, [the beneficiary] will be responsible for optimizing the modules in Assembly along with C level optimization; working on all video standards; and Assembly coding on DSP based architecture. He will also work on optimizations in Context based Adaptive Binary Arithmetic Coding and system integration and testing with real-time performance issues.
>
> [The beneficiary's] duties will also include: unit and integration testing; white box and black box testing; designing and coding for the projects; Object oriented and Windows programming; assembly coding; and conducting code reviews. He will be heavily involved in the design, implementation and testing of multiple projects. [The beneficiary] will be responsible for generating a testing plan and project schedule and for maintaining documents in accordance with the Quality standards as set by the company.

The petitioner further stated that the beneficiary has "gained significant experience with and advanced knowledge of [the foreign entity's] software products" and is "an expert at designing multi-media software to run on silicon platforms."

In addition, the petitioner provided a copy of its Professional Services Agreement with Texas Instruments, various documents describing the company's products and various articles regarding the OMAP platform. The petitioner also submitted a November 3, 2003 letter from the Director of OMAP Software Development for Texas Instruments, written in support of six L-1 visa petitions filed by the petitioner, including the instant petition. In the letter, the Texas Instruments representative describes the partnership between the two companies, and states:

> [The foreign entity's] video conferencing and other multimedia applications and our marketing and development collaboration with [the petitioner] continue to comprise a very important component in our strategy for OMAP's global roll out. I should emphasize that it is imperative to TI's OMAP business and our ability to meet our commitments to . . . global customers that the PACE team should be available to work on these Projects in the US. It is not possible for TI to source, either internally or from another third party developer, the level of OMAP software related expertise and competency which the [petitioner's] team provides to TI.

Finally, the petitioner submitted the beneficiary's resume, which outlines the projects described above; his educational documents, confirming that he completed a master of technology in communication engineering in January 2002; another job description describing his current role with the foreign entity; and various organizational charts, including a detailed organizational chart for the "OMAP Multimedia Software Validation Project." The beneficiary's name does not appear on the submitted chart.

In a request for evidence dated November 25, 2003, the director provided the regulatory definition of "specialized knowledge" and requested that the petitioner provide additional evidence, including: (1) evidence related to the unique methodologies, tools, programs, and/or applications used by the company, with a detailed description of how they may be differentiated from those used by other companies; (2) a detailed description as to the equipment, system, product, technique or service of which the beneficiary has specialized

knowledge, and an indication as to whether it is used or produced by other employers in the United States or abroad; (3) a record from human resources detailing the manner in which the beneficiary has gained his specialized knowledge, including documentation indicating the pertinent training courses in which the beneficiary has been enrolled, the duration of courses and certificates of completion.

The petitioner submitted a response dated February 13, 2004, which included additional descriptions of the company, its business relationships with chip manufacturers, operating systems vendors and mobile device manufacturers, and a "Company Overview and Technology Overview." The petitioner further indicated that it has U.S. patents pending for several key algorithms in its software, including algorithms for video encoding and decoding.

In response to the petitioner's request for additional information regarding the manner in which the beneficiary gained his specialized knowledge, the petitioner explained:

> [T]o even commence employment at [the foreign entity] as a junior engineer, a person must have a minimum of an Bachelor of Computer Science/Engineering University degree. Many of [the foreign entity's] employees also have a Masters degree also in this area.
>
> Beyond that high entry level requirement, engineers acquire their knowledge and experience of [the foreign entity's] software products from their day to day work on the software code base and our algorithms, rather than from external courses. Consequently, please understand that it is not possible to provide evidence of training courses attended because this is not how the individual acquired the knowledge and experience that . . . the customers require.

In lieu of training documentation, the petitioner provided a "record of experience" for the beneficiary outlining the eight different projects to which he was assigned between March 2002 and January 2004. Out of these eight projects, only two project descriptions indicate that understanding of OMAP processor architecture was required.

The director determined that the record did not establish that the petitioner will employ 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 "would not be significantly different from those of any other Software Designer in your company; nor is there evidence that his duties differ from the duties performed by other Software Designer[s] in the software development industry." The director concluded that the position of software designer does not warrant the expertise of someone possessing specialized knowledge. The director also stated that the petitioner did not establish that the ability to design software for the OMAP platform is uncommon, nor did it establish that "an understanding of these methods within your company is indicative of advanced knowledge. Just the fact that [the beneficiary] was hired by your company in March of 2002 would tend to show that his knowledge is not advanced nor is he 'key personnel.'"

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. Noting that the beneficiary had received only on-the-job training, the director found that the beneficiary had not established that he has advanced knowledge of the company's processes and procedures "beyond what any engineer working for the company would have." 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 asserts that the director "misinterpreted and misapplied the law of specialized knowledge." Counsel relies heavily upon a 1994 Citizenship and Immigration Services (CIS, formerly INS) memorandum, which is discussed in great detail in the submitted brief. *See* Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994).

Counsel further asserts that the director erred in requiring that the petitioner establish that the beneficiary possesses knowledge which is different from other software designers in the company, noting that the beneficiary's advanced knowledge "need not be narrowly held throughout the company" and need only be "different from that generally found in the particular industry." Counsel emphasizes that his knowledge is advanced based on his experience with the Indian company, and that his knowledge is uncommon in the industry because the foreign entity's software applications are proprietary. Counsel concludes that the beneficiary is therefore "not performing general software work that any software designer could do with minimal training. He is an expert with two years of experience in developing [the petitioner's] unique, proprietary software multimedia applications specifically designed for the TI OMAP platform."

In response to the director's determination that the petitioner had not provided evidence that knowledge of software design for the OMAP platform is uncommon, counsel asserts that the November 3, 2003 letter from Texas Instruments citing the need for the petitioner's software engineers was sufficient. Specifically, counsel notes that the petitioner's client "attests to the dearth of companies who can develop software applications for the OMAP platform . . ." and notes that Texas Instruments indicated that it is not possible to hire another company to produce these applications "because [the petitioner] is the world leader in developing multimedia software applications for TI's OMAP silicon chip platform." Counsel concludes that this letter "provides exceptionally strong evidence that the knowledge of designing software to run on TI's OMAP platform is very uncommon in the software industry."

Counsel further contends, again citing the 1994 memorandum, that "it is irrelevant whether [the beneficiary's] knowledge of these software applications is narrowly or widely held throughout [the foreign entity]." Counsel also disputes the director's finding that the beneficiary's knowledge is not advanced because he will work as a member of a team, noting that "the fact that [the beneficiary] has been chosen for this employee team proves that his level of knowledge of [the foreign entity's] proprietary software design applications processes and procedures is not common in the company and is, in fact, advanced." Counsel further states that all of the employees transferred to the United States in connection with this project are "key personnel." In addition, counsel objects to the director's observation that the beneficiary has less than two years of experience with the foreign entity, noting that his bachelor's degree, master's degree and experience with the foreign entity "are

sufficient for him to have acquired advanced knowledge of the company's proprietary software design processes and procedures."

Counsel further notes that the beneficiary possesses several of the characteristics of a specialized knowledge employee as outlined in the 1994 INS memorandum, noting that the beneficiary "possesses knowledge that is valuable to the employer's competitiveness in the marketplace;" "has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, image or financial position;" possesses knowledge which normally can be gained only through prior experience with the employer; and "possesses knowledge of a product or process which cannot be easily transferred or taught to another individual." Counsel notes that "clearly only software designers who have significant experience working with [the foreign entity's] unique, proprietary software applications for the T1 OMAP platform are qualified to perform that work in the U.S." and states that hiring and training software design engineers who were unfamiliar the petitioner's processes and procedures would cause "significant economic inconvenience" to both the petitioner and its client.

In support of the appeal, the petitioner submits a letter from Texas Instruments' immigration counsel, in which she states that the petitioner's group is "the world leader in the development of OMAP software applications" and restates the need for the services of the foreign entity's engineers on the project.

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 a "temporary manpower company providing software designers to take over jobs in the U.S.," rather than a developer of unique, proprietary software applications for the OMAP platform.

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 descriptions of the beneficiary's intended employment in U.S. entity, and his responsibilities as a software design 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 advanced knowledge of the petitioner's software development processes and proprietary applications, and "is an expert with two years of experience in developing [the petitioner's] unique proprietary software multimedia applications specifically designed for the TI OMAP platform." The petitioner asserts that the beneficiary possesses specialized knowledge as a result of his "two years" of work experience in the foreign company, including "many projects" involving development of software for the OMAP platform. Counsel also claims on appeal that all of the petitioner's software design engineers possess advanced knowledge with respect to this technology. The

petitioner, however, provides no documentation to establish that the beneficiary received training in the OMAP platform or performed work assignments focused specifically on the OMAP project work to be undertaken in the United States. 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, 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).

This lack of evidence of the beneficiary's previous work assignments and prior experience with designing software for the OMAP platform is particularly damaging to the petitioner's claims because the minimal evidence submitted suggests that the beneficiary has had limited exposure to working with this platform. During his 20 months of employment with the foreign company, the beneficiary undertook eight project assignments. Based on the project information provided, only two of these assignments required any understanding of the OMAP architecture. The petitioner claims that the beneficiary has been working on the OMAP Multimedia Software Validation Project in India, but his name does not appear on the project organization chart submitted with the petition. The petitioner also submitted a detailed description of the beneficiary's duties that lists the major purpose of his position as "assembly coding on DSP and ARM processors" and provides the following list of duties:

Primary Responsibilities
Optimizing the modules in assembly along with C level optimization
Optimizations in Context based adaptive Binary Arithmetic Coding.
Assembly and C level optimizations.
To work on all video standards.
System integration and testing with real-time performance issues.
Assembly coding on DSP based architectures.
System level optimization and tuning for single and multiple processor architecture.
Unit and integration testing; white box and black box testing.
Generate testing plan and project schedule.
Maintain the documents as per the Quality set by the Company.

Other Responsibilities:
Designing and coding for the projects.
Object oriented programming
Windows programming.
Code reviews.
Studying MPEG-4 scalable standards.
Involvement in design, implementation and testing of multiple projects.
Assembly coding.
Study and implementation of OMAP family processors.

Training Requirements:

Technical Communication.
Team Work.
Advanced DSP
Embedded Architectures and Optimization techniques.
System Level Programming.

Assuming that he performed the duties listed in this job description, it is not clear how the beneficiary became an "expert" in designing software for OMAP architecture given that "studying" this architecture was one of nineteen responsibilities assigned to him and not among his primary responsibilities. Rather, based on the evidence presented, it is evident that the beneficiary has devoted minimal time to working with the OMAP platform during his 20 months of employment with the foreign entity. Accordingly, the petitioner has not established that the beneficiary actually possesses the claimed specialized knowledge.

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)).[1] 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.

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[1] 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.

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 does not contend that the beneficiary's knowledge is more advanced than other software design engineers employed by the foreign entity, and merely states that he has acquired "significant advanced knowledge" of the company's processes and procedures in development software applications for the OMAP platform "from his two years of working for [the foreign entity] in India." The petitioner states that the beneficiary's knowledge should be considered advanced because he was chosen for the assignment in the United States. The petitioner's statements imply that any of its software engineers chosen for a foreign assignment can be considered to have "advanced" knowledge of the company's processes and procedures, and the petitioner further states that all such employees are "key personnel." The petitioner fails to 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 software design processes for the OMAP platform 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 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 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.")

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 the U.S. company's success. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Again citing the 1994 memorandum, counsel states on appeal that the knowledge the beneficiary possesses "would be difficult to impart to another individual without significant economic inconvenience to the U.S. or foreign firm" and that he "possesses knowledge which normally can only be gained only through prior experience with the employer." In order for these arguments to be persuasive, the petitioner would first need to establish with specificity the specialized knowledge possessed by the beneficiary and describe how he obtained that knowledge. As discussed above, the petitioner has not established that the beneficiary possesses the claimed specialized knowledge.

The AAO notes that, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, the memorandum may be useful as a statement of policy and as an aid in interpreting the law; it will not supersede the plain language of the statute or regulations. Therefore, while the beneficiary's contribution to the economic success of the corporation and the availability of other workers to perform the proposed duties may be considered, the plain language of the regulations specifically requires 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 software development for mobile device platforms, and specifically for the OMAP platform, 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 the letters from the petitioner's partner, Texas Instruments, stating the need for the beneficiary's services and the existence of the professional services agreement between the two companies is sufficient to establish that knowledge of OMAP software design processes is uncommon in the industry. Contrary to counsel's assertions, the petitioner has not established that the authors of the letters are "unquestioned experts." It is understandable that the petitioner's business partner wishes for the petitioner to fulfill the terms of its agreement and provide the agreed software engineering staff in the United States. However, the existence of the professional services agreement is insufficient to establish that the position requires "specialized knowledge" as contemplated in the regulations.

Furthermore, while the petitioner repeatedly states that it is the "global leader in the development of specialized multimedia software applications for TI's OMAP chip platform," other documents in the record indicate that Texas Instruments has at least dozens of software development companies in its "OMAP Developer Network" and is investing substantial monies to expand such network. The petitioner indicates that it optimizes its software applications for a number of platforms, including OMAP; it has not been explained how OMAP differs from other platforms, such that knowledge of software design for this platform could be considered "specialized." While the petitioner states that its software is proprietary, it has not established that any particular proprietary knowledge is required to perform the duties of the position in the United States. In fact, the beneficiary's proposed duties are identical to those described in his Indian job description, quoted above. As discussed above, the primary duties include C and Assembly coding for ARM and DSP processors and subsequent integration and testing. The petitioner has not established that either the beneficiary's current position or the proposed position requires any substantial knowledge of OMAP technology. By utilizing the same generic job description for both positions, the petitioner has failed to specify the beneficiary's particular role within the project to be undertaken in the United States, therefore making it impossible for the AAO to conclude that the role requires specialized or advanced knowledge. As noted by the director, the duties have not been shown to be significantly different from any other software design engineer working in this field.

Overall, while the position of software design engineer may require a comprehensive knowledge of software design processes, experience with coding and testing software at the silicon chip level and some exposure to OMAP architecture, there is no documentation, other than counsel's assertion, that a software design 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 Obaigbena, supra*; *Matter of Ramirez-Sanchez, supra*.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of other engineers who were assigned to similar positions within the United States-based project. It must be emphasized that that each petition filing is a separate proceeding of proceeding with a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Based on the lack of evidence of eligibility in the instant record, the director was justified in denying this petition.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.