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U.S. Citizenship and Immigration Services

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File: LIN 05 237 50173 Office: NEBRASKA SERVICE CENTER Date: NOV 28 2005

IN RE: Petitioner:
Beneficiary:

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

IN 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, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the development, manufacture and marketing of medical diagnostic systems. It claims to be an affiliate of Roche Diagnostics GmbH, located in Penzburg, Germany. The petitioner seeks to employ the beneficiary as a chemical technician for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position requires an individual with 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 for the petitioner asserts that the director misinterpreted the requirements for the L-1B nonimmigrant classification as defined in the statute and as outlined in two Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) policy memoranda issued in 1994 and 2002, respectively. Counsel further asserts that the director failed to consider the information submitted in response to the request for evidence. Finally, counsel states that the director erroneously relied on *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982) and *Matter of 1756, Inc. v. Attorney General*, F. Supp. 9, 15 (D.D.C. 1990), rather than applying the proper statutory and regulatory criteria. Counsel submits copies of the above-referenced 1994 and 2002 memoranda in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a July 29, 2005 letter submitted with the I-129 Petition, the petitioner explained that the beneficiary had completed four years of vocational training as a chemical technician with the petitioner's German affiliate, during which time she completed courses in protein-biochemistry methods, oncology, immunology, and pharmacology. The petitioner indicated that the beneficiary assumed her present role as a chemical technician with the foreign entity in February 2002 and currently performs the following duties:

> She works with Proteomics technologies, using two-dimensional gel electrophoresis, software-based image analysis and sample preparation. She utilizes immunological methods in examining crude tissue extracts. [The beneficiary] also utilizes western blotting and technical documentation of tissue samples and antibodies. She utilizes Lectin affinity chromatography and protein G affinity chromatography, develops ELISA prototype assays, and conducts Elecsys tests in order to develop new products and improve existing products for our customers.

The petitioner further described the beneficiary's proposed position in the United States as follows:

> If approved, [the beneficiary] will serve as Chemical Technician for Assay Development for Therapeutic Drug Monitoring. She will work to develop IVD products, according to DCC guidelines for the Global Lab Systems organization which meet or exceed technical

> specifications and customer requirements. She will participate [in] product evaluation, application and manufacturing transfer activities and provides technical expertise to the company's product and customer support groups. This position participates in new product ideas, feasibility, project design, and project planning. She will work to develop or modify existing IVD products according to project plans, DCC guidelines and [m]arketing specifications which meet or exceed customer requirements. She will perform evaluation and application studies as needed to ensure that product performance meets design specifications. She will document studies, make pertinent observations, draw conclusions and make recommendations for future work.
>
> [The beneficiary] will develop and validate test procedures for raw materials, intermediate components and finished products. She will assist product and customer support groups by providing technical expertise and training necessary for development of a strong product performance and troubleshooting knowledge base. She will participate as a member of appropriate project teams representing R&D as needed, prepare abstracts, conference posters and publications, and will assist team leaders in the preparation of Design History files.

The petitioner stated that the beneficiary's current and proposed positions are similar and both involve product and precision instrument/sample testing, technical product development and complaint resolution aspects of the business. Finally, the petitioner stated that the beneficiary qualifies as a specialized knowledge intracompany transferee "by virtue of her nearly 7 years of experience with our German affiliate, all of which has been spent working with testing and research of chemical reagents, precision instruments and other processes similar to those which will be utilized in the US position." The petitioner noted that the beneficiary's knowledge of the organization's products, methods, resources and relevant U.S. and foreign customer product needs would be "invaluable to the function that will take place here in the [U.S.]," and stated: "The fact that she has completed training in Protein-Biochemistry Methods, Oncology, Immunology, and Pharmacology also demonstrates her specialized knowledge in this subject area."

On August 22, 2005, the director advised the petitioner that the evidence of record was insufficient to establish that the knowledge possesses by the beneficiary is specialized, noting that the plain meaning of the term "specialized knowledge," is knowledge or expertise beyond the beyond the ordinary in a particular field, process, or function. The director further observed that it appeared the duties to be performed would not be significantly different from those performed by other chemical technicians employed by other companies in the petitioner's field. Accordingly, the director instructed the petitioner to provide evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director noted that the evidence submitted must establish that the beneficiary's knowledge of the processes and procedures of the company is "apart from the elementary or basic knowledge possessed by others." Finally, the director requested that the petitioner submit evidence of any training the beneficiary has received with the foreign entity, including the dates, duration and objectives of such training, as well as evidence of how the beneficiary's training and knowledge is unique from that of other chemical technicians employed within the petitioner's group and others in the industry.

In a response dated August 24, 2005, counsel submitted a letter and copies of two policy memoranda addressing the interpretation of specialized knowledge: James A. Puleo, Acting Exec. Assoc. Comm., Office of Operations, Immigration and Naturalization Service, *Interpretation of Special Knowledge* (Mar. 9, 1994) ("Puleo memo"); Fujie O. Ohata, Assoc. Comm., Service Center Operations, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge* (Dec. 20, 2002) ("Ohata memo"). Counsel reiterated the previously provided job descriptions for the beneficiary's current and proposed positions. Citing a definition of specialized knowledge from the Puleo memo, counsel stated that the beneficiary "clearly possesses knowledge of the company product and its application in international markets," based on her more than three years of experience as a chemical technician with the foreign entity. Counsel emphasized that "only one year of experience is required to qualify under the specialized knowledge regulations," and further explained how the beneficiary qualifies for classification as an employee with specialized knowledge:

> Because health care diagnostic systems are designed for not only a specific manufacturer, but also for specific clients and end uses, diagnostic system designs are normally specific and special to each individual model or type of product. Some systems and developments can be used across products for certain applications due to universal design for a specific subgroup. However, many are model or line specific. Health care products are one of the most heavily regulated and technical products made. . . . [The beneficiary's] work is performed "in order to develop new products and improve existing products for our customers." This clearly constitutes special knowledge, and also demonstrates the "application in international markets" as [the beneficiary] designs and improves these items for usage in markets for [the petitioner's corporate group] in multiple countries.

Counsel noted that the Puleo memorandum requires the beneficiary's knowledge to be different from that generally held within the industry and "uncommon," but not proprietary or unique. Counsel stated: "Because healthcare diagnostic systems are designed for particular end use, clients or lines and types of products, usually from a single supplier/design source, the design of [the petitioner's] diagnostic components and/or products are necessarily unique, as are the models and lines of products we supply and design components for, and it is also necessarily 'different or uncommon.'" Counsel emphasized that the Puleo memo states that there is no requirement that the alien's knowledge be unique, proprietary or not commonly found in the United States labor market. Counsel stated that the Puleo memo outlines possible characteristics of employees possessing specialized knowledge, and specifically asserted that the beneficiary: (1) possesses knowledge that is valuable to the employer's competitiveness in the marketplace; (2) is qualified to contribute to the U.S employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry; (3) has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; (4) possesses knowledge which, normally, can be gained only through prior experience with the foreign employer; and (5) possesses knowledge of a product or process which cannot be easily transferred or taught to another individual.

Additionally, counsel emphasized that the beneficiary: had been working on the designs and types of research and products on which she will work in the United States; had worked with the petitioner's products and customer base and the unique requirements of our various product models for seven years; will "communicate best practices" between the petitioner's international operations based on her knowledge of international

diagnostic market conditions; had "contributed significantly" to the foreign entity's designs; will provide technical expertise and training critical to the petitioner's product improvement and development; and, that the beneficiary possesses knowledge of "unique lines, models and makes of diagnostic systems" that could only be gained through previous experience with the company.

Counsel further explained:

> [The beneficiary] and her foreign and proposed US Positions clearly meet either of the alternate definitions for a specialized knowledge worker. The knowledge she possesses and that required to perform her duties goes well beyond "mere knowledge of nomenclature or procedures." Healthcare diagnostic systems are complex scientific designs which are highly-regulated and must appropriately interact with unique designs and components in each new use and model of diagnostic tool. Knowledge of our products as well as the design requirements of our varied and unique customers as well as testing materials and other supplies is required in order to design safe, effective and affordable diagnostic systems.
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> The need to adapt existing designs in order to move them from or into the US market also requires knowledge of the existing product and its requirements, as well as the requirements and regulations of the target market. As noted, these designs are very complex and designed to work with very precise and specific companion component parts that are normally patented and specific to individual lines, uses and models of diagnostic tools.

Finally, with respect to the beneficiary's training, counsel reiterated that the beneficiary completed four years of "vocational training" prior to assuming her current role with the foreign organization. Counsel noted that as the regulations require only one year of experience in a position involving specialized knowledge and no formal educational training, the beneficiary's preparation "far exceeds these minimum requirements."

On September 6, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position requires an individual with specialized knowledge. The director noted that the statutory definition of "specialized knowledge" requires Citizenship and Immigration Services to make a comparative assessment not only between the claimed specialized knowledge employee and general labor market, but also between that employee and the remainder of the petitioner's workforce. The director found that the beneficiary's duties appear to be those associated with any chemical technician or research assistant position at any company in the petitioner's industry, noting that such companies are required to adhere to certain guidelines in developing In Vitro Diagnostic, or IVD, medical devices.

The director further concluded that the petitioner had not adequately explained exactly what the beneficiary's claimed specialized knowledge is, as the petitioner had not indicated that she would apply her existing knowledge of any particular device or product in the prospective position, but rather would be working on development and testing of new products. The director noted that the evidence also failed to establish that the beneficiary has developed an advanced knowledge of the petitioner's products, systems or processes from her coursework or work experience that would distinguish her from other chemical technicians or similar

employees engaged with the same technologies throughout the petitioner's international organization or by other companies similar to the petitioner. The director found that the limited evidence submitted with respect to the beneficiary's training and experience compared to that of other similarly employed workers within the petitioner's organization made it impossible to classify the beneficiary's knowledge of the petitioner's technologies as advanced, and precluded any finding that she qualifies as "key personnel." The director discussed *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982) and *1756, Inc. v. Attorney General*, F. Supp. 9, 15 (D.D.C. 1990) in his decision to emphasize the need for CIS to make comparisons between the beneficiary's claimed specialized knowledge and the knowledge of other similarly employed workers within the petitioner's group and within the industry. The director determined that the evidence of record did not sufficiently establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality, or that the beneficiary's position abroad or proposed position in the United States require a person with "specialized knowledge" as defined in the regulations.

On appeal, counsel for the petitioner contends that the director failed to acknowledge any of the arguments or evidence submitted in response to the request for evidence and failed to apply the above-referenced Puleo and Ohata memoranda to the facts of this case. Counsel argues that the director erroneously concluded that the beneficiary "received no specific training since the beginning of her employment with the foreign company," noting that the petitioner clearly indicated that the beneficiary received four years of vocational training prior to assuming her current position with the foreign entity. Counsel again emphasizes that the regulations only require one year of "specialized knowledge employment" and suggests that the director's request for documentary evidence related to the beneficiary's training was irrelevant.

Counsel further contends that the cases cited by the director, *1756, Inc. v. Attorney General* and *Matter of Penner*, and, indirectly, the legislative history for the L-1 visa classification, do not provide a valid legal basis for the adverse decision. Counsel suggests that Congress "was not clear" on the definition of specialized knowledge, prompting the subsequent issuance of the 1994 Puleo memo and 2002 Ohata memo. Counsel further asserts that the director disregarded these memoranda by requiring that the petitioner distinguish the beneficiary's knowledge from that held by other employees within the petitioner's group, noting that the petitioner must only establish that the knowledge is different from that found generally in the particular industry, "not different from internal employees." Counsel attempts to distinguish the instant matter from *Matter of Penner*, noting that the decision "merely prohibits use of the L classification for skilled workers or lower categories of workers." Counsel claims that the petitioner's response to the request for evidence outlined the various types of specialized knowledge that may qualify an employee for L-1B status under the Puleo and Ohata memoranda, and contends that the director failed "to provide any justification for disregarding its own procedural guidance set out in these two memos" or "any reasoning for rejecting the arguments set forth by the petitioner regarding qualification according to the memos."

On review, the petitioner has not demonstrated that the beneficiary's prospective position requires "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D). Instead, the petitioner consistently describes the position as one requiring an experienced and skilled chemical technician, rather than someone who possesses specialized knowledge.

As a preliminary point, the petitioner's claim fails on an evidentiary matter. The petitioner contends that the beneficiary gained her specialized knowledge through a four-year vocational training program followed by more than three years of practical experience as a chemical technician with the foreign entity. The petitioner identified four specific areas of training undertaken by the beneficiary, and claimed that the completion of this training "demonstrates her specialized knowledge in this area." Yet, when the director requested evidence to establish the nature and existence of the beneficiary's training, counsel merely responded that that there is no formal training requirement for this visa category and provided no further information or documentation. It is reasonable for the director to request information that will establish the nature of the beneficiary's training and assist him in identifying the claimed specialized knowledge, whether the beneficiary possesses the claimed knowledge, the petitioner's requirements for the position, and any other information that will enable him to evaluate the claimed specialized knowledge. Although the training is critical to the petitioner's claim, the record is devoid of any evidence of this training.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 8 C.F.R. § 214.2(l)(3)(viii). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). By itself, the petitioner's failure to submit the requested evidence of the beneficiary's training is grounds for denial. For this reason, the appeal must be dismissed and the petition denied.

Second, regarding the petitioner's claim of specialized knowledge, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that CIS is bound to base its decision on theabove-referenced Puleo and Ohata memoranda, the memoranda were issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents. Counsel's specific objections to the director's reliance on *Matter of Penner* and *1756, Inc. v. Attorney General* will be discussed in more detail below.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish that it involves specialized knowledge. *Id.* It is also appropriate for the AAO to then 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 *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, *supra* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that 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

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[1] Counsel specifically asserted that the director erred by citing *Matter of Penner* in his September 2, 2005 decision. However, 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, including *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

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.")

Thus, based on the intent of Congress in its creation of the of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee classification. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee. As discussed below, the beneficiary's job description does not distinguish her knowledge as more advanced or distinct among chemical technicians employed by the foreign or U.S. entities or by other unrelated companies who design similar types of products based on common industry standards. 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. Rp. 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.

Counsel relies heavily on the 1994 Puleo memo and 2002 Ohata memo and asserts that these memos represent current CIS policy of specialized knowledge criteria. The Puleo memo allows CIS to compare the beneficiary's knowledge to the general United States labor market in order to distinguish between specialized and general knowledge. The Acting Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Puleo memo, *supra*. A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. *Id.* The analysis for specialized knowledge therefore requires a review of the knowledge possessed by the

United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

Counsel claims that the director erred by attempting to compare the beneficiary's knowledge with those of other workers employed within the petitioner's group of companies, and also disputes the director's reliance on *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990). In *1756, Inc.* the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court noted that the legislative history demonstrated a concern that the L-1 category would become too large: "The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service." *Id.* at 16. (citing H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750,2754, 1970 WL 5815). The court stated, "[I]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance. Congress referred to 'key personnel' and executives." *1756, Inc.*, 745. F.Supp. at 16.

While the AAO acknowledges counsel's statements that the *1756, Inc.* decision cited by the director pre-dates the 1990 amendment to the definition of "specialized knowledge," it has been noted above that Congress' 1990 amendments to the Act did not specifically overrule *1756, Inc.*, nor any administrative precedent decision, nor did the 1990 amendments otherwise mandate a less restrictive interpretation of the term "specialized knowledge." The House Report, which accompanied the 1990 amendments, stated:

> One area within the L visa that requires more specificity relates to the term "specialized knowledge." Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company.

H.R. Rep. No. 101-723(I), 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418. As previously noted, the statutory definition states, "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 knowledge of processes and procedures of the company." 8 U.S.C. § 1184(c)(2)(B).

Prior to the Immigration Act of 1990, the statute did not provide a definition for the term specialized knowledge. Instead, the regulations defined the term as follows:

> "Specialized knowledge" means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organizations' product, service, research, equipment, techniques, management or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

8 C.F.R. § 214.2(l)(1)(ii)(D)(1990).

Although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge," Congress did not give any indication that it intended to expand the field of aliens that qualify as possessing specialized knowledge. Although the statute omitted the term "proprietary knowledge" that was contained in the regulations, the statutory definition still calls for "special knowledge' or an "advanced level of knowledge," similar to the original regulation. Neither the 1990 House Report nor the amendments to the statute indicate that Congress intended to expand the visa category beyond the "key personnel" that were originally mentioned in the 1970 House Report. Considered in light of the original 1970 statute and the 1990 amendments, it is clear that Congress intended for the class of nonimmigrant L-1 aliens to be narrowly drawn and carefully regulated, and to this end provided a specific statutory definition of the term "specialized knowledge" through the Immigration Act of 1990.

Contrary to counsel's assertions, the Puleo memorandum, although issued after the 1990 amendment, does not differ significantly from previous CIS guidance on this issue, other than removing the requirement that a beneficiary's specialized knowledge be proprietary or unique. For example, the memorandum indicates that one possible characteristic of an employee who possesses specialized knowledge is that the individual "has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position." Puleo memo, *supra*. While the language differs from previous interpretations, this criterion is another way of stating that the petitioner may establish a beneficiary's specialized knowledge credentials by submitting evidence that the beneficiary is a "key employee." Accordingly, counsel's argument that CIS is prohibited from comparing the beneficiary's knowledge to that of similarly employed workers within the petitioner's international group is not persuasive, and the AAO will consider whether the beneficiary qualifies as "key personnel" in its analysis.

In this matter, the petitioner has provided only general descriptions of the beneficiary's current and proposed roles as a chemical technician that convey little understanding of the type or extent of specialized knowledge that would be required to successfully perform the purported job duties. When asked by the director to describe how the beneficiary's knowledge of the petitioner' products or other interests is "uncommon, noteworthy, or distinguished by some unusual quality," the petitioner responded by emphasizing the beneficiary's experience with the overseas office. However, other than stating that the beneficiary's duties in the United States will be "similar" to those she performs for the foreign entity, it is unclear what specialized knowledge the beneficiary possesses or how this knowledge would be applied in the proffered position.

The petitioner indicated that the beneficiary currently works as a chemical technician working with proteomic technologies in which her duties include two-dimensional gel electrophoresis, software-based image analysis, sample preparation, immunological methods in examining crude tissue extracts, western blotting and technical documentation of tissue samples and antibodies. The petitioner indicated that she utilizes chromatography methods and conducts tests in order to develop and improve new and existing products, but did not identify any specific products or the beneficiary's contribution to their development. Without further explanation, these appear to be duties that could be performed by any chemical technician trained in the same field as the beneficiary.

In the United States, the beneficiary would develop IVD products according to DCC guidelines, participate in product evaluation, application and manufacturing transfer activities, provide expertise to product and customer support groups, participate in project design and planning, develop and validate test procedures for raw material, intermediate components and final products, provide technical expertise and training, participate in project teams and assist team leaders. Again, this job description could describe any chemical technician position in the petitioner's or any other company, as the petitioner did not identify any aspect of the position that would require special knowledge of the petitioner's products or the specific experience possessed by the beneficiary.

Based on these descriptions, it is not possible to determine if the beneficiary would even be working on the same types of products in the United States, much less applying specialized knowledge of a specific product that could only be gained with the foreign employer. The AAO notes that there is no mention that the beneficiary has previous experience specifically related to the development of IVD products with the foreign entity, and thus it is difficult to determine how her experience with the foreign entity prepared her to perform the duties of a chemical technician for IVD product development with the petitioner.

Counsel attempts to differentiate the beneficiary's knowledge by noting that companies that develop products for the healthcare industry generally customize their product lines for particular uses or customers, therefore making prior experience with the company's products different from experience which would generally be held within the petitioner's industry. The petitioner emphasized that the beneficiary possesses specialized knowledge of the petitioner's products, methods and resources and "customer product needs." However, as noted above, the petitioner does not indicate that the beneficiary is being transferred to the United States to apply her knowledge of a particular product line or to continue work with a specific customer or customers, nor has it described the beneficiary's claimed specialized knowledge in any detail, or her contribution to the design or development of a particular product or component. Similarly, counsel attempts to distinguish the beneficiary's knowledge by emphasizing her knowledge of the company's products and its application in international markets. Counsel asserted that the petitioner and the foreign entity need to adapt German products to meet the requirements of the United States market and vice versa, and stated that the beneficiary may provide training to United States employees, but again, failed to identify any specific products or technologies being transferred between the two countries, the beneficiary's relevant experience with any particular product or technology to be transferred, or the type or purpose of the training to be delivered by the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As discussed above, beneficiaries of L-1B petitions should be more than merely skilled, but rather must be shown to carry out key processes or functions. In addition, the petitioner should establish that the beneficiary's knowledge meets the plain meaning of "special." *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) (defining "specialized knowledge" as "special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests"). "Special" is defined as "surpassing the usual; distinct among others of a kind; peculiar to a specific person or thing." *Webster's II New College Dictionary* 2001, Houghton Mifflin. *See also Webster's Third New International Dictionary*, 2001 (defining special as "distinguished by some unusual quality; uncommon; noteworthy.") In this case, the

petitioner has only established that the beneficiary is a trained employee who fills a position the petitioner considers important. However, the beneficiary has been and will be working as a technician. While counsel correctly stated that it is the beneficiary's actual job duties and not her job title that determine whether she possesses specialized knowledge, it is evident that as a technician, she does not play a lead or senior role in the development or enhancement of the petitioner's products. Rather, it is likely that she works under the guidance and direction of scientists, researchers and engineers and follows standard procedures in performing her job duties, utilizing scientific analysis and testing techniques and methods common in the industry. The petitioner has not established that the beneficiary performs unusual duties or that she is employed primarily to carry out a key process or function. *See Matter of Penner*, 18 I&N Dec. at 52.

The record does not distinguish the beneficiary's knowledge as different or more advanced than the knowledge possessed by other similarly employed chemical technicians supporting development of the same types of products for similar companies in the petitioner's industry. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. at 53.

Likewise, the petitioner has submitted no evidence that would distinguish the beneficiary from any other chemical technician employed within its international organization. Counsel specifically objected to the director's request that the petitioner submit evidence that would set the beneficiary's knowledge apart from others within the petitioner's organization, yet continues to claim that the beneficiary's knowledge is "advanced." The petitioner does not, however, contend that the beneficiary's knowledge is more advanced than other chemical technicians employed within its organization, and it specifically rejects the suggestion that it is required to do so. As discussed above, counsel's position is incorrect; the petitioner is required to establish that the beneficiary is a key employee rather than merely a skilled worker with knowledge of the petitioner's products and processes. Based on counsel's arguments, anyone who has worked as a chemical technician with the foreign entity for more than one year would possess "special knowledge" or an "advanced level of knowledge." Counsel's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker.

Considering that the beneficiary commenced a four-year vocational program with the foreign entity at the age of sixteen, it appears that the foreign entity offers a formal post-secondary school apprenticeship program in the beneficiary's specialty, and that the training she completed was no different from that completed by many other chemical technicians employed by the foreign entity. The petitioner offered no information regarding other employees working for the foreign company, such that the director or the AAO could make a meaningful comparison between the beneficiary's claimed "advanced knowledge" and the knowledge possessed by other workers within the petitioner's organization. Although knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products and processes. The lack of evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's products or procedures as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. While it may be correct to say that the beneficiary is a highly skilled and experienced employee, the petitioner has not established that the beneficiary rises to the level of a

specialized knowledge or "key" employee, as contemplated by the statute. *See Matter of Penner*, 18 I&N Dec. at 53.

Finally, the AAO will address counsel's claim that the beneficiary qualifies for classification as a specialized knowledge employee pursuant to characteristics outlined in the 1994 Puleo memo, specifically, that she: possesses knowledge that is valuable to the employer's competitiveness in the marketplace; is qualified to contribute to the petitioner's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry; has been utilized abroad in a capacity involving significant assignments; possesses knowledge which normally can only be gained through prior experience with the foreign employer; and possesses knowledge of a product or process that cannot be easily transferred to another individual. While these factors 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 discussed above, the petitioner has not established that the beneficiary's knowledge rises to the level of specialized knowledge contemplated by the regulations.

Regardless, counsel's claims regarding the beneficiary's qualifications under the Puleo memo were not supported by evidence. As stated in the 1994 Puleo memorandum:

> [T]he mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing *through the submission of probative evidence that the alien's knowledge is uncommon noteworthy, or distinguished by some unusual quality* and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company *must be supported by evidence describing and setting apart that knowledge from the elementary of basic knowledge possessed by others*. It is the weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge.

(Emphasis added.) Puleo memo, *supra*.

The AAO notes that the only supporting documentary evidence submitted in support of this petition was a 2004 annual report for the petitioner's corporate group. Upon review, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any evidence that would allow the AAO to evaluate the claim. In fact, the petitioner's response to the director's request for evidence consisted solely of a memorandum from counsel containing arguments supported with no evidence other than copies of the Puleo and Ohata memos. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Based on the above discussion, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among chemical technicians working in the petitioner's industry. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's products or products is more advanced than the knowledge possessed by others employed by the petitioner. The AAO does not dispute the fact that the beneficiary's knowledge has allowed her to successfully perform her job duties for 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. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that her knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

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. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.