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FILE: LIN 02 196 50299 Office: NEBRASKA SERVICE CENTER Date: DEC 08 2006

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
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 § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an Oregon corporation, is engaged in the purchase and export of previously owned computers. The petitioner claims that it is the subsidiary of Elis Computers Ltd., located in Russia. The petitioner seeks to employ the beneficiary as the export manager of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner has not established that the beneficiary will be employed by the petitioner in a capacity involving specialized knowledge or in a managerial capacity. The director further found that the U.S. entity is not a qualifying organization doing business 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 for the petitioner disputes each of the director's findings, and notes that the petitioner need not establish that the beneficiary will be serving in a managerial capacity in order to qualify for the L-1B visa classification. Counsel submits a brief 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) 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.

The regulation at 8 C.F.R. § 214.2(l)(3)(vi) also provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

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.

The nonimmigrant visa petition was filed on May 28, 2002. In an appended letter dated May 24, 2002, the petitioner stated that the beneficiary will perform the following duties as the U.S. company’s export manager:

In this position he will be responsible for export of computers and notebooks to the parent company in Russia. He will communicate with the parent company and U.S. suppliers to coordinate and arrange the export sale of computers and notebooks to Russia. He will interact with sales personnel and distributors in Russia. He will represent the Company in contract negotiations, resolve problems with Russian customers, and arrive at mutual agreements. He will be responsible for sales forecasting, accounting, preparing and examining invoices, sales confirmations and shipping documents for export orders to Russia. Moreover, [the

beneficiary] will be responsible for developing a market for these products in the United States.

The petitioner noted that the beneficiary had been employed by the foreign entity as a sales manager from January 1999 through August 2000, "during which time he has developed proprietary knowledge with regard to Company's products and the industry in which the Company operates." The petitioner described the beneficiary's previous position as follows:

Responsibilities include managing all aspects of the company's business related to the importation of computers and notebooks from the U.S. to Russia. Manage all functions related to the importation of company's products. Oversee the shipment of products and overall business administration.

Finally, with respect to the beneficiary's specialized knowledge qualifications, the petitioner stated:

[The beneficiary] is uniquely qualified to contribute to our Company his knowledge and expertise of Company's product line in the Russian market developed with our parent company. He possesses knowledge that can only be gained through extensive prior experience with the parent Company. The specialized knowledge gained in Russia is extremely valuable to our Company.

[The beneficiary's] understanding of the Russian market and consumers demand, make him a unique candidate for this position. Without the advanced level of knowledge of the processes and procedures of the Company that [the beneficiary] developed as the Sales Manager, the position in question cannot be filled adequately.

[The beneficiary] is amply qualified for the position of Export Manager. He has been working for the parent company for over 1 year. Moreover, he has received a Bachelor's degree in Accounting and Auditing from the State Academy of Economics and Law in Russia and a Post-Baccalaureate degree in Information Systems from Portland State University.

The petitioner submitted a "work certificate" from the foreign entity which states that the beneficiary was employed as its sales manager from January 15, 1999 through August 28, 2000. The petitioner provided a copy of the beneficiary's resume which indicates that he was employed as sales manager with the foreign entity from January 1999 through August 2000, where he was responsible for sales management, contractual negotiations with key customers and order processing. According to the beneficiary's resume, he was enrolled at the State Academy of Economics and Law in Russia from September 1995 through June 2000.

The petitioner did not submit any supporting documents to substantiate its claims that specialized knowledge is required to fulfill the duties of the proffered position, nor evidence to establish that the beneficiary possesses specialized knowledge.

In a request for evidence, dated August 5, 2002, the director instructed the petitioner in part, as follows:

Submit evidence that the beneficiary possesses special knowledge of your product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures. The evidence must establish that the beneficiary's duties abroad for the qualifying employment, and the duties in the United States meet the criteria as managerial or executive in capacity or a position requiring specialized knowledge.

Submit a statement from an authorized official of the petitioner, which describes the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition.

Submit evidence to establish that the beneficiary has at least one continuous year of full-time employment abroad with the petitioner or with the petitioner's foreign parent, branch, affiliate or subsidiary within the three years immediately prior to the filing of this petition.

In an October 24, 2002 letter, counsel for the petitioner stated that the beneficiary possesses specialized knowledge pursuant to section 214(c)(2)(B) of the Act because he "has a special knowledge of the company product and its application in international markets." Counsel further explained the beneficiary's qualifications as follows:

The company's Export Manager position requires special knowledge of the intricacies of the Russian computer market. The Export manager is also expected to implement the parent company's business model and structure while setting up the foreign branch to facilitate the communication process and interrelation between companies. This involves a wide range of processes, criteria, specific strategies, cultural peculiarities, knowledge and skill, including: knowledge of the specifics of the Russian computer market, knowledge of the required product, quality control and strict set of quality criteria, knowledge of the working environment established in the parent company, managerial skills, price fluctuations on the Russian market, business strategy and growth expectations, existing contacts with Russian partners and suppliers, and fluency in Russian and English languages.

[The beneficiary] possesses many of the characteristics of an employee with "specialized knowledge" enumerated in Memo, Norton, Assoc. Comm., Examinations (Oct. 27, 1988), reprinted in 65 Interpreter Releases 1194 (Nov. 7, 1988). First, [the beneficiary] possesses knowledge that is valuable to the employer's competitiveness in the market place. . . . [The beneficiary] was specifically trained and sent to the U.S. to open the foreign branch utilizing the knowledge and skills gained during his employment with the parent company. His knowledge of the processes and procedures of the Company, is an essential element of the Company's competitiveness in the market.

* * *

Third, [the beneficiary] has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer's productivity, competitiveness,

image or financial position. He has already started the initial phase of establishing the branch in the U.S. . . . Obviously these undertakings require specialized knowledge and will enhance the Company's productivity and financial position.

Finally, [the beneficiary] possess knowledge which can be gained only through extensive prior experience with employer [sic]. [The beneficiary's] prior experience with the parent company has given him specialized knowledge regarding the company, products and their applicability in international markets.

The petitioner also submitted an October 23, 2002 letter from the foreign entity's president, who stated that the beneficiary, in his position with the foreign entity, "received diversified training while performing the following duties: sales management, contractual negotiations with key customers and suppliers, customer service supervising, human resources management, assisting the chief accountant, researching various product and distribution issues, and wholesale division sales." The foreign entity's president further stated that the beneficiary's proposed duties for the petitioner will include: branch operations management, outsourcing the product for the parent company, contractual negotiations, retail and wholesale sales management, shipping products to Russia, establishing an internet presence, hiring and training staff, and maintaining high quality customer service.

Finally, the petitioner submitted a letter from the director of operations for one of its U.S. suppliers, who references the beneficiary's "unique knowledge of the configuration of the products which are important for the Russian market," and notes that the beneficiary "has unique and specialized knowledge of the Russian Market" that is not commonly available in the United States.

The director denied the petition on February 28, 2003, concluding that "the job duties that the beneficiary is performing do not qualify as special knowledge. The beneficiary merely has an understanding of the computer systems requested by the foreign entity. The beneficiary is essentially an agent of the foreign operation, buying used computers to be sent to the foreign operation to be resold in Russia." The director went on to conclude that the beneficiary, as the petitioner's sole employee, would not be employed by the petitioner in a managerial capacity.

On appeal, counsel for the petitioner disputes the director's findings and asserts that the proposed position requires "special knowledge crucial to the company," and that [m]ere understanding of the computer systems required by the foreign entity is not sufficient." Counsel reiterates the job description provided in his October 24, 2002 response to the director's request for evidence and asserts that the beneficiary "therefore possesses special knowledge required of the Company and qualifies under the L regulations." Counsel also addresses the directors' comments regarding the beneficiary's managerial capacity, and notes that the petitioner has recently hired an international market analyst. Counsel asserts, however, that the petitioner need not establish the beneficiary's qualification for managerial capacity.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that he will be employed by the U.S. entity in a position requiring specialized knowledge. However, as a preliminary matter, the AAO concurs with counsel that the director's findings with respect to the beneficiary's proposed employment in a managerial capacity are inappropriate

and irrelevant, as the petitioner clearly requested that the beneficiary be granted L-1B classification as an employee with specialized knowledge. The director's comments regarding the beneficiary's managerial capacity are therefore withdrawn.

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). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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. See *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.

Here, the beneficiary's proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. For example, the beneficiary's responsibilities of managing the U.S. branch, implementing the foreign entity's business model and structure, facilitating communications with the foreign entity, managing sales, hiring and training staff, shipping products to Russia, representing the company in contract negotiations, forecasting sales, performing accounting, preparing invoices and shipping documents, and developing a market for the company's products are all tasks typically performed by any individual tasked with overseeing a start-up operation in a new market. If CIS were to follow the petitioner's reasoning, any foreign worker transferred to the United States to open a new office would qualify for L-1B status as a specialized knowledge worker, simply based on their familiarity and experience with a related foreign entity.

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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

For example, the petitioner emphasizes the beneficiary's familiarity with "a wide range of processes, criteria, specific strategies," "knowledge of the working environment established in the parent company," and familiarity with "existing contacts with Russian partners and suppliers." The beneficiary's general knowledge or familiarity with the foreign entity's "processes," "criteria," "strategies," "working environment," and contacts does not rise to the level of specialized knowledge as contemplated by the statute and regulations. Regardless, the petitioner has offered no documentary evidence which would distinguish the petitioner's and foreign entity's processes, strategies or environment from that of any other company offering similar services. 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)). The petitioner also emphasizes the beneficiary's formal education and bi-lingual ability. These qualifications, while valuable to the petitioner, do not establish the beneficiary's specialized knowledge of the petitioner's products, services, processes or procedures.

The record is devoid of any documentary evidence that the beneficiary's position involves "special knowledge of the company product and its application in international markets" as claimed by the petitioner. Neither the foreign entity nor the U.S. entity produces a product. Both companies are in the business of purchasing and re-selling previously owned computers manufactured by well-established companies in the industry. Knowledge of common PC and notebook software and hardware configurations is clearly widespread throughout the computer re-sale market and is not specific to the petitioner's organization. The petitioner attempts to distinguish the beneficiary's knowledge as special by emphasizing the "intricacies of the Russian computer market," noting that the market demands "specific configurations," "peculiar" packaging requirements, and specific consignment documentation. The petitioner has not attempted to explain or document the claimed "intricacies" or "peculiarities" of the Russian market, nor explained how knowledge of the market would amount to specialized knowledge specific to the petitioning organization. Nor has the petitioner supported its implausible claim that knowledge of the Russian computer market can only be gained with the foreign entity. Again, 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. at 165.

Furthermore, the petitioner has not shown that previous experience with the foreign entity or knowledge of the Russian computer market is actually required to perform the proposed duties. Based on the evidence presented, which includes purchase orders, invoices and shipping documents,, the U.S. company is currently engaged in purchasing used computers in the United States and re-selling them to a primarily U.S.-based clientele. While it appears that the company has purchased and shipped some computers to its Russian parent company, this is clearly not the primary focus of the business. Such a conclusion is supported by the petitioner's reference to its plans to establish an internet presence in the United States, as well as retail and wholesale operations. The petitioner has not shown that knowledge of foreign operating conditions is required to purchase and re-sell computers in the United States market.

The petitioner has not submitted any evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other similarly-employed workers within the petitioner's group or working for other employers within the computer wholesale and retail industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. 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 term "specialized knowledge" is relative and cannot be plainly defined. 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 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 has indicated that the beneficiary possesses specialized knowledge as a result of his employment with the foreign entity, noting that he possesses "knowledge that is valuable to the employer's competitiveness in the market place" as a result of being "specifically trained to open the U.S. branch utilizing the knowledge and skills gained during his employment and training with the parent company's products, processes and procedures." Counsel further states that the beneficiary has been utilized as a key employee abroad, and notes that the beneficiary has been given significant assignments that have enhanced the employer's productivity and financial position. The petitioner offers no further information regarding the beneficiary's specific training, nor does it attempt to substantiate its claim that the beneficiary has been utilized in significant assignments. The fact that he was chosen to open the U.S. office is not sufficient to establish his employment in a specialized knowledge capacity or his status as "key personnel." The record contains no detailed employment history for the beneficiary, and the petitioner does not claim that he received any special training, such that the AAO could determine exactly what "special" or "advanced" knowledge the beneficiary possesses or how he acquired it. Finally, counsel states that the beneficiary's knowledge could only be gained by prior experience with the company abroad. Again, no evidence is submitted to substantiate counsel's claims. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

To the contrary, the record as presently constituted does not establish that the beneficiary even possesses one year of continuous full-time employment with the foreign entity, much less demonstrate that his employment involved specialized knowledge. The petitioner initially submitted a brief statement from the foreign entity, identified as a "work certificate" stating that the beneficiary was employed as a sales manager from January 15, 1999 to August 28, 2000. In response to the director's request for additional evidence to establish the beneficiary's one year of continuous full-time employment abroad, the petitioner re-submitted the same document. 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). This evidence was particularly relevant, as the record indicates that the beneficiary was attending the State Academy of Economics and Law from September 1995 through June 2000, thus raising a reasonable question as to whether his employment with the foreign entity was on a full-time basis. For this reason alone, the petition cannot be approved.

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). 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. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker, or the petitioner's reasoning that any employee chosen to open a new office in the United States should be deemed to possess specialized knowledge.

Overall, the petitioner and counsel imply that merely working for the foreign entity as a sales manager is sufficient to bestow "special knowledge" or an "advanced level of knowledge." While it may be correct to say that the beneficiary is a productive and valuable employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel." Similarly, 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. The beneficiary's contribution to the economic success of the new office may be considered, but the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's processes 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).

Finally, counsel's reliance on the 1988 Norton memorandum is misplaced. It is noted that the memorandum was intended solely as a guide for employees and will not supercede the plain language of the statute or the regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. Regardless, the assertions made throughout the record merely paraphrase the statutory and regulatory definitions, as well as the above-referenced memorandum. Specifics are clearly an important indication of whether a beneficiary's duties encompass specialized knowledge; otherwise meeting the definition would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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.

Thus, as the petitioner has not established the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, nor has it established that the position of general manager within its organization requires specialized knowledge, the director

rationaly determined that the beneficiary does not qualify as a specialized knowledge worker. While the AAO recognizes that the beneficiary, as the sole employee of the new office, will carry out key functions within the petitioner's organization, and recognizes the petitioner's preference to secure the services of an employee who has worked for its parent company, these elements are insufficient to establish eligibility for classification as a specialized knowledge worker. There is nothing in the record to suggest that any other experienced employee within the parent company's organization, or any employee with a record of success in a similar role within the petitioner's industry, could not adequately perform the proposed duties.

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*, 745 F. Supp. at 16. Based on the foregoing, the record does not establish that the beneficiary possesses specialized knowledge, or that he would be employed by the U.S. entity in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.