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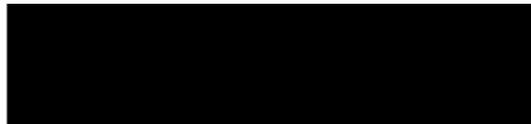
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IN RE: Petitioner:
Beneficiary:



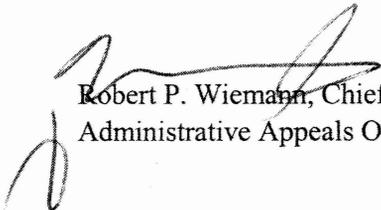
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 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 provision of consulting services in the areas of software development and testing. The petitioner states that it is the subsidiary of Disha Technologies (India) Pvt. Ltd., located in Pune, India. The petitioner seeks to employ the beneficiary as a test tool solution specialist for a three-year period.

The director denied the petition, concluding that the beneficiary was not employed by the foreign entity in a specialized knowledge capacity for at least one year within the three years prior to the filing of the petition. The director emphasized the petitioner's statement that its in-house training program "lasts at least one year" and found that the beneficiary, who had been employed by the foreign entity for 13 months as of the date the petition was filed, had not yet acquired one year of working at the specialized knowledge level.

On appeal, counsel for the petitioner asserts that the director's decision is incorrect as a matter of law in stating that the beneficiary must have completed one year of working at the specialized knowledge level. Counsel asserts that pursuant to section 101(a)(15)(L), the petitioner need only establish that beneficiary worked for a qualifying foreign entity for one year, and that the beneficiary possesses the specialized knowledge. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, 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 within the three years preceding the beneficiary's application for admission into the United States. 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.

This matter presents two related, but distinct issues: (1) whether the beneficiary was employed by the foreign entity for at least one year in a position involving 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 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 or procedures.

The nonimmigrant petition was filed on May 2, 2005. In a letter dated April 26, 2005, appended to the initial petition, the petitioner described the beneficiary's proposed duties as a test tool solution specialist as follows:

[The beneficiary] will be involved in highly proprietary test strategy methodologies including: developing test strategy for the product features; developing test cases; test automation design and coding using the automation libraries already developed by [the company]; analysis of crashes by doing kernel level and user level debugging; and regression testing. [The beneficiary's] primary proprietary duties at [the petitioner] will be to provide technical account management for our existing customers. [The beneficiary] has been already working with these customers including their technical staff. [The beneficiary] has insights about our customer's highly proprietary and specialized data such as functional specifications, coding standards, and release criteria. [The beneficiary] will work with the client's own specialized tools to strategize tests, create test plans, and design test automations on a product platform level. [The beneficiary's] onsite presence and availability of in-person meetings with Microsoft's engineering team will further strengthen our company's association with these customers and be a major factor in carrying out his responsibility successfully.

The petitioner further provided the following description of the beneficiary's current position as a senior developer with the foreign company:

[The beneficiary] is involved in highly proprietary test strategy methodologies including: developing test strategy for the product features; developing test cases; test automation design and coding using the automation libraries already developed by [the company]; analysis of crashes by doing kernel level and user level debugging; and regression testing. He is responsible for providing expert advice and services in proprietary software testing and quality engineering (STQE). [The beneficiary] is also responsible for execution of highly proprietary and specialized sample projects to estimate time and resources and to provide specialized data to customers about [the company's] abilities to execute projects per customer specifications. Additionally [the beneficiary] has insights about our customer's specialized data such as functional specifications, coding, standards and release criteria and how their data interfaces with our specialized test documents. [The beneficiary] has been involved in developing highly proprietary projects with Microsoft, Concur and iRise with his proprietary knowledge of certain tools and procedures for Quality Assurance and testing of software to perform the duties of the project successfully.

* * *

The beneficiary has been actively involved in multiple successful releases of various projects undertaken by [the foreign entity] and is well equipped to fulfill the project needs. He has successfully executed client-customized projects that involve design and development of test tool strategies and implemented [the petitioner's] proprietary services. [The beneficiary's] knowledge is particularly unique and proprietary in that he possesses the following cross-functional skills, which he acquired at [the foreign entity] in connection with our clients' product features. [The beneficiary] has received specialized training in the above-mentioned areas, and he has gained experience in these areas by working on many projects for our client. The combination of skills and experience that [the beneficiary] possesses is highly proprietary to us.

[The beneficiary] is indeed one of our key personnel, specifically trained in our proprietary test strategy methodologies. He has undergone our extensive in-house training program described above in this letter.

The petitioner stated that the U.S. company specializes in providing leading edge software solutions to businesses, including software modules for customers, automated tests, internal tools technical support, and training tools. The petitioner provided the following additional information regarding the company and its services:

We are one of the few companies in the world who test a wide range of our clients' products, from high-end platforms to web services. We partner with our clients who manufacture products. We assess their hardware and software requirements, building customized software for them, and train them to use the software themselves. We create unique testing tools and methodologies, which are tailored to that client, which then provides the most effective

software testing system to protect against bugs and provide the best product our client, can produce. . . .

In addition, the petitioner further described its test tool solutions and training requirements:

Our repertoire of test tools solutions is unique to the industry; it would be impossible to train a U.S. worker, without at least one year of in-house [company] training, to perform the duties of the position at a minimum level. Our solutions differ from those of our competitors in our test strategy methodologies including for example how we develop customized test strategies and how we perform compliance and functional testing. A U.S. software test engineer, without having undergone our [company] training program, would lack the knowledge of our test strategy methodologies and clients' specific customized applications. As another example, we have our own proprietary processes for an abstraction model for effort estimation techniques. Another process example is a managed model, which deals with communication methodologies of work processes.

Our test tool solutions are more than proprietary; they are unique to each of our clients. We . . . have already established long-term relationships with our clients. We have collaborated with them to asses [sic], at the most detailed level, their internal product needs. [The beneficiary] will work with the client's own specialized tools to strategize tests, create test plans, and design test automations on a product platform level. . . .

Our test tool solutions are indeed unique to the industry. Our test strategy methodologies in contrast to those of our competitors, span multiple cross-functional and interoperable machines and technologies.

* * *

A Test Tool Solutions Specialist not trained by [the company] would, quite simply, lack the knowledge of [the company's] testing methodologies across multiple cross-functional and interoperable machines and technologies. It would take us at least a minimum of one year to train a U.S. experienced software tester, without [the company's] training, to perform the duties of [the beneficiary's] position at a minimum level. Further, the U.S. worker would lack the knowledge about each client's unique system, and of the client collaborated set of customized solutions for their specific product features.

The petitioner stated that its in-house training program includes the following components:

1. Developing a test strategy for the product features under consideration takes 6 months plus experience
2. Developing test plans takes three months plus experience
3. Developing test cases takes three months plus experience

4. Cover various areas of testing such as Installation testing, functional testing, stress testing etc. takes 1 month
5. Test automation design and coding using the automation libraries already developed by [the company] and develop more library functions if required for the specific project takes 6 months plus experience
6. Analysis of crashes if any and finding the root cause by doing kernel level and user level debugging takes one month plus experience
7. Regression testing takes one month

Some of the above mentioned training areas may be concurrently taught; however, the training time period would always last at least one year for each employee.

The petitioner summarized the beneficiary's qualifications as follows:

We are confident that [the beneficiary] is the most eligible person for this position and believe that his advanced, highly specialized and highly proprietary knowledge and experience regarding our organization's goals will contribute to the growth and expansion of [the company's] activities in the North American marketplace. [The beneficiary] has been trained and has gained experience and knowledge of [the company's] proprietary processes like the abstraction model, managed model as well as the customer's test methodologies. He has extensive training in house in the areas of development of a test strategy for product features, test plans and test cases.

The petitioner noted that it is involved in a "highly proprietary project" with Microsoft Corporation involving its test tool solutions, and submitted a letter from Microsoft dated March 17, 2005, indicating that Microsoft has hired the petitioner "to provide its services, through test resources of various skill sets, who are trained and proficient in both Microsoft and [the petitioner's] proprietary tools, processes and methodologies." Microsoft's representative further stated that the company "is looking for resources from [the petitioner] who have experience with our specific internal and external technologies and products."

The petitioner submitted a letter dated July 12, 2005 from the foreign entity's chief operating officer, who confirmed the beneficiary's employment with the petitioner's parent company since March 29, 2005. The foreign entity provided a description of the beneficiary's current duties as a senior developer:

His current duties involve proprietary test strategy methodologies including, developing test strategy for the product features; developing test cases; test automation design and coding. [The beneficiary] is responsible for execution of our specialized sample project to estimate time and resources and to provide unique data to customers about [the company's] abilities to execute projects per customer specifications.

The petitioner also provided a copy of the beneficiary's resume, which identifies his current duties on a User States Migration Tool project for Microsoft Corporation since November 2004. The beneficiary indicates that his duties as a senior developer are "understanding of documents and Test Framework using client's specific

standards. Writing test scenarios for SMI part (Setting Management Infrastructure) considering various user application combinations depending on the scenario criteria set by client in xml file format." According to the resume, the project requires skills in "scenario development using XML file format, Windows 2003 and Longhorn operating system." The beneficiary's resume highlights his bachelor's degree in computer engineering and technical skills in Windows operating systems, programming languages (C, Java, HTML, PL/SQL), relational database management systems (SQL Server 200, MS-Access, Oracle), development and test tools (VB 6.0, Quick Test Professional 6.5), scripting (ASP, VB Script, Java Script), application software and application development, and shows that he had fourteen years of experience as a software developer prior to joining the foreign entity.

The petitioner also submitted company information including brochures, white papers, and excerpts from the company's web site.

The director issued a request for additional evidence on June 3, 2005, in which he advised the petitioner as follows:

The beneficiary started employment with the petitioner in March 2004. The petitioner's letter states it has in-house training, "which last at least one year." Therefore the beneficiary just recently completed training and it would not appear he has yet acquired one year of working at the specialized knowledge level. As such, please submit evidence to establish that the beneficiary has at least one continuous year of full-time employment abroad with the petitioner's foreign parent, branch, affiliate, or subsidiary within the three years immediately prior to the filing of this petition working in a specialized knowledge capacity.

In a letter dated July 12, 2005, counsel for the petitioner confirmed that the beneficiary had over one year of full-time employment with the foreign entity as of the date the petition was filed. Counsel stated that the beneficiary "was fully employed and on payroll . . . during the entire time that he was receiving the training. The training is therefore concurrent with the employment. During the one-year period, the beneficiary was indeed carrying out the proprietary tasks of this petition, while being trained, supervised, and overseen."

Further, citing section 101(a)(15)(L) of the Act, counsel asserted:

There is no requirement in the law or regulations that the beneficiary have completed one year of working at the specialized knowledge level. Rather, the law requires that the beneficiary have worked with the petitioner for one year, and that the beneficiary possess the specialized knowledge. These are two separate requirements. . . .

* * *

The regulations at 8 C.F.R. section 214.2(l)(1)(ii)(A) track the above-cited language in the INA.

We believe we have demonstrated, in the petition we have filed, that the beneficiary does possess both the requisite time of employment with us and that he possesses the requisite specialized knowledge.

The director denied the petition on August 16, 2005, concluding that the petitioner had not been employed by the foreign entity in a capacity involving specialized knowledge for one year within the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(iv). Acknowledging the petitioner's response to the request for evidence, the director found that while the beneficiary was on the payroll of the foreign entity for one full year prior to the filing of the petition, "the beneficiary just recently completed training in March 2005. . . . [a]s such, it does not appear the beneficiary has yet acquired one year of working at the specialized knowledge level."

The petitioner filed the instant appeal on September 12, 2005. On appeal, counsel for the petitioner asserts the director's decision is incorrect as a matter of law in stating that the beneficiary must have completed one year of employment at the specialized knowledge level. Counsel reiterates his assertion that "there is no such requirement in the law or regulations" and contends that the law requires that the beneficiary have worked with a qualifying organization for one year, and that the beneficiary possess specialized knowledge.

Counsel further asserts that the director "cites no law or regulation to support its alleged requirement that the alien have completed one year of working at the specialized knowledge level." Counsel notes that the director merely recited section 101(a)(15)(L) of the Act, which counsel claims supports the petitioner's argument. Counsel emphasizes that the director did not contest that that beneficiary possesses specialized knowledge, or that he was employed by the foreign entity for a full year.

Counsel further states that the denial "eviscerates the plain meaning of the law and regulations. It creates a *de facto* requirement that the beneficiary have been employed for more than one year, because it would be logically impossible for a beneficiary to have already possessed the specialized knowledge on his or her first day on the job."

Counsel's assertions are not persuasive. The petitioner has not established that the beneficiary possesses "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), that he was employed by the foreign entity in a position involving specialized knowledge, or that the intended position in the United States. requires an employee with specialized knowledge.

Upon review, the AAO notes that the director's decision, while appropriate based on the evidence submitted, does not address whether the beneficiary possesses specialized knowledge, or whether the proposed position in the United States is in a specialized knowledge capacity. As the AAO's review is conducted on a *de novo* basis, the AAO will herein fully address the petitioner's evidence and eligibility. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Preliminarily, the AAO acknowledges counsel's assertion that there is no statutory or regulatory requirement that the beneficiary be employed "at the specialized knowledge level" for at least one full year prior to the

filing of a nonimmigrant intracompany transferee petition requesting classification as a specialized knowledge worker. Counsel's assertion is not persuasive.

Section 101(a)(15)(L) of the Act states:

...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order *to continue* to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive or involves specialized knowledge.

In order to "continue to" render services in a capacity that is managerial, executive, or involves, specialized knowledge, it is necessary for the beneficiary to have been employed in one of these qualifying capacities during his or her employment abroad. Contrary to counsel's contentions, the evidentiary requirements for the filing of an L-1 petition, as set forth by the regulations at 8 C.F.R. § 214.2(l)(3)(iv), further confirm the petitioner's burden to establish that the beneficiary was employed in a qualifying capacity. Specifically, the petitioner is required to submit "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."

Therefore, the director's decision was not "beyond the scope of the law and regulations" as asserted by counsel. The petitioner clearly and repeatedly stated that its in-house training program in test solutions requires at least one year for each employee to complete, and that an employee who had no prior experience with the petitioner's group of companies requires one year of training "to perform the duties of this position at a minimum level." Based on the petitioner's representations, the beneficiary, who joined the foreign entity on March 29, 2004, would have reached a minimum level of competence in his position approximately one month before the petition was filed. Accordingly, the director reasonably concluded that the beneficiary's previous thirteen months of employment did not involve one full year of employment which would be considered to be at the level of a "specialized knowledge" employee. Even if the beneficiary's period of training could be considered to "involve" specialized knowledge, as discussed further below, the L-1B visa classification was not intended for employees who are minimally qualified to perform their stated duties.

The AAO also acknowledges counsel's argument that the director's decision "creates a de facto requirement that the beneficiary have been employed for more than one year." It must be noted that the regulations require evidence that the qualifying year of employment be in a managerial or executive capacity, or in a capacity requiring specialized knowledge. Therefore, if some portion of the beneficiary's foreign employment is not in a qualifying capacity, an employee who has been employed with a qualifying entity for many years may not meet this eligibility requirement. A determination as to whether a beneficiary was employed *in a qualifying capacity* for the requisite one-year period must necessarily be made on a case-by-case basis. In this case, the petitioner's stated one-year training requirement for the type of position offered effectively made it impossible to find that the beneficiary, after thirteen months of employment, could have been employed in a position involving specialized knowledge for one full year. To the extent that a requirement that the beneficiary be

employed for more than one year was imposed, the petitioner's statements regarding its training program and the minimum requirements for the beneficiary's position imposed it.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look 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.*

In the instant matter, the petitioner submitted descriptions of the beneficiary's employment in the foreign entity and his intended employment in the United States entity. However, the petitioner has not documented that the job duties to be performed require specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). The beneficiary's job description does not distinguish his knowledge as more advanced or distinct among other software testing specialists employed by the foreign or U.S. entities or by other unrelated companies. The majority of the beneficiary's duties relate to developing testing strategies and test cases for other company's products, designing and coding automated tests, analyzing and debugging problems during testing, and performing regression testing. The beneficiary's technical skills, as listed in his resume, are in technologies that are common in the software development field, and do not involve any systems or technologies that are specific to the petitioner's group of companies. An experienced software developer with a background in testing tools at any information technology consulting company would be expected to possess similar expertise.

The petitioner and counsel have repeatedly asserted that the beneficiary is knowledgeable of methodologies for developing customized test strategies and performing functional testing that are proprietary and unique to the petitioner and its foreign parent company. In its letter dated April 26, 2005, the petitioner referenced its "abstraction model for effort estimation techniques" and its "managed model" used for communication of work processes. The petitioner also attempts to differentiate the U.S. and foreign entities from their industry competitors by emphasizing that its methodologies span "multiple cross-functional and interoperable machines and technologies." Specifically, the petitioner stated that its test automation methodologies involve "the development test code/test drivers for test scenarios spanning across multiple machines that involves remote execution, network traffic generation, distribution test configuration, execution and management." In addition, the petitioner emphasized that its platform test automation methodologies involve a variety of platform technologies including operating systems, subsystem, and components, device interfaces, middleware, enterprise application integration systems, workflow systems and databases. The petitioner stressed the demanding nature of its testing procedures, and noted that its platform test automation methodologies are challenging in that they involve the development of tools such as application/services simulators, data generators, client applications, network traffic generators, and test condition simulators. The petitioner states that this knowledge is not available to the U.S. marketplace.

The petitioner's assertions are not supported by documentary evidence that would establish that its testing methodologies and procedures are actually significantly different from those utilized by other companies who provide consulting services in the software-testing field. The fact that the petitioner's group provides these services across a broader range of platforms than its competitors is irrelevant to a determination as to whether an individual employee within the company possesses specialized knowledge. While the AAO does not doubt that the work is demanding and challenging as stated by petitioner, the petitioner's group develops tools and

methods for the automated testing of software and systems developed by its clients. The petitioner has not established how or whether its strategies, methodologies and tools differ from those utilized by any other company, nor identified with any specificity any methodologies or tools developed specifically by the petitioning company. 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)). Any test engineer employed in the beneficiary's field would reasonably be expected to utilize tools to identify, analyze, and reproduce defects during the testing process, and utilize the tools needed to automate testing, such as application simulators, data generators, client applications, network traffic generators and test condition simulators. Again, the petitioner's methodologies and tools, while specific to the company, have not been shown to be significantly different from those used by other information technology consulting firms, which necessarily also utilize project methodologies and automated project tracking and estimation tools in order to efficiently manage similar client projects. The petitioner has not established that its "proprietary" methodologies and tools, while highly effective and valuable to the petitioner, are more than customized versions of standard practices used in the industry. For this additional reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

In addition, 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.

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 regulation or precedent decisions interpreting the term. The legislative history does not indicate that Congress intended to expand or loosen the standards for the L-1B classification. 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.

Id. at 53. The evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, the term "specialized knowledge" is inherently a relative idea which cannot have a plain meaning. 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that 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.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). 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 to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

Therefore, based on the intent of Congress in its creation of the L-1B visa category, even if the petitioner were to demonstrate that the beneficiary has received some specialized training, acts as a specialist, or performs highly technical duties, this showing will not necessarily establish eligibility for L-1B intracompany transferee classification. The petitioner must submit evidence to show that the beneficiary has "special" or "advanced level" knowledge within the company and is being transferred to the United States as a "key employee." This has not been successfully demonstrated in the instant case, where the beneficiary appears to be one among a large number of the petitioner's employees who possesses similar training and knowledge. Based on the petitioner's representations the beneficiary spent the vast majority of his time abroad performing his duties under close supervision while participating in the company's year-long in-house training program, rather than completing assignments which would elevate the beneficiary to the level of "key personnel."

It has not been demonstrated that the beneficiary possesses advanced knowledge of the petitioner's and foreign entity's tools. The petitioner has indicated that each and every employee requires at least one year of training in the development of test strategies, plans, test cases, testing, automation design and coding, analysis of crashes, and regression testing in order to be minimally competent to perform the duties of a test tools specialist. Since the beneficiary has been employed by the foreign entity for 13 months, it is reasonable to assume that he has recently completed his training and possesses a level of knowledge equivalent to every other employee who has been employed by the company in a similar position for the same length of time, and less advanced than many employees who have been employed by the company for a longer time. The petitioner has not described how the beneficiary utilizes the company's methodologies and strategies in his current role or how his knowledge rises above that of other similarly employed workers within the foreign entity. The petitioner has provided no basis for comparing the knowledge held by the beneficiary to that held by other employees working on similar projects for the petitioner in the same market sector or technical specialty.

Therefore the petitioner's assertion that the beneficiary's knowledge is "advanced" and "highly specialized" is completely unsupported by the evidence of record. If all similarly employed workers within the petitioner's organization receive the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. 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 all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

Finally, even assuming, *arguendo*, that the petitioner had established that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures, there is no evidence in the record to establish that the position with the United States entity requires such knowledge. As noted above, the beneficiary will be performing duties typical of a software test specialist, using technologies and skills that are common in his profession. While it is clear that he would use the petitioner's methodologies to carry out his testing duties, he would also be bound to the client's specifications and requirements and industry standards in software testing

and quality engineering, in performing his duties. The petitioner has not indicated that the beneficiary will hold a senior role within the project he would be joining, nor identified any duties which would require an advanced knowledge of company processes and tools. Rather, it appears that any employee who had similar experience in the beneficiary's technical specialty and had completed the petitioner's internal training program could perform the duties of the offered position. While the beneficiary's prior experience working on the U.S. customer's project may be helpful, the petitioner has not described the project, much less identified anything unusual or unique regarding this particular project, such that only employees with prior experience with the project would be capable of carrying out testing and debugging procedures according to the client's requirements. 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.

In sum, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among software test specialists and engineers in the information technology field. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. The AAO does not dispute the fact that the beneficiary's knowledge has allowed him to successfully perform his job duties for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a "key employee," 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 his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

Rather, the record reveals that other information technology companies utilize comparable procedures and tools, that the claimed specialized knowledge is itself widely available within the petitioner's organization, and that other organizations, although they do not utilize exactly the same test strategies, methodologies and project procedures, may employ workers with technical knowledge and skills equivalent to that of the beneficiary. Furthermore, as concluded by the director, the petitioner has failed to establish that the beneficiary was actually employed for one continuous year after completing the training required to perform the claimed specialized duties competently and independently, much less established that the beneficiary's training and experience have resulted in advanced knowledge of such procedures which would elevate him to the level of key personnel. If an employee with 13 months of experience could be deemed to possess specialized knowledge, then all employees who had completed the minimum training with the foreign entity would possess specialized knowledge under the petitioner's proposed rubric. Indeed, the beneficiary in this matter would appear to be typical of an employee with 13 months of experience in the petitioner's organization. Thus, as the petitioner has not established that the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, the director reasonably determined that the beneficiary does not qualify as a specialized knowledge worker.

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. The petitioner has not established that the beneficiary was employed by the foreign entity in a position involving specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For these reasons, the appeal must be dismissed.

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.