**U.S. Department of Homeland Security**
20 Massachusetts Ave. N.W., Rm. 3042
Washington, DC 20529

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

U.S. Citizenship and Immigration Services

**PUBLIC COPY**

[redacted]

D7

File: SRC 04 027 52804 Office: TEXAS SERVICE CENTER Date: JAN 10 2006

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

b6

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of customer implementation and training manager 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 a Massachusetts corporation engaged in development and implementation of dental laboratory management software. The petitioner claims to be a subsidiary of Inventrix, Ltd., located in Knutsford, Cheshire, United Kingdom. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a position requiring specialized knowledge.

On appeal, counsel for the petition disputes the director's findings and argues that the director improperly applied requirements that are inconsistent with the relevant statute, regulations and service policy. Counsel specifically objects to the director's reference to a ""key personnel"" requirement and asserts that this requirement was removed from the definition of "specialized knowledge" enacted by Congress in the Immigration Act of 1990. In support of these assertions, Counsel submits a brief and additional evidence.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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.

The issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity that involves specialized knowledge.

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

> 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.

On the I-129 Petition and on the L Supplement to Form I-129, the petitioner indicated that it was seeking to employ the beneficiary in L-1B status.

In its supporting letter dated October 22, 2003, the petitioner stated that it seeks to transfer the beneficiary "so that she can provide crucial training and support for our dental practice management software products to our clients and future employees." Specifically, the petitioner outlined the following duties to be performed by the beneficiary:

> [The beneficiary] will be required to modify our existing training models and documentation to carry out in-house or customer based training courses to new users of [the petitioner's] software systems. She will also be required to confer with our client's Project Managers to ensure that all . . . systems and applications are installed and operational in a timely manner and that all planned implementation schedules are met. Finally, [the beneficiary] will be charged with training new . . .US staff.

With respect to the requirements of the position offered in the United States, the petitioner provided the following explanation:

> We require the service of employees of [the foreign entity] in order to facilitate the installation, application and servicing of our new European based laboratory management systems. As discussed earlier these products are new to the North American market. We do not employ any workers in the US who would be able to install, service, and train users of our UK based product line without substantial delay. In addition, at this time training a new

> worker is not feasible. The training period would be so long, nearly one year, that waiting would cause a significant interruption in our business. Our customers demand that we immediately fulfill and service their orders.
>
> * * *
>
> The [customer implementation and training manager] must possess an intimate knowledge of [the petitioner's] proprietary management systems and training program and a firm grasp of the technology behind all of our current products. In addition the [customer implementation and training manager] must be knowledgeable of [the petitioner's] development program and future product enhancement in order to advise customers accordingly.

Finally, the petitioner noted in its supporting letter that the beneficiary had served as a software account manager with the petitioner's British parent company for over two years, and described her qualifications as follows:

> [The beneficiary] has acquired specialized knowledge of LabTRAC, our flagship product, and has managed training and implementation for numerous installation projects. Over the course of the last several years she has been intimately involved in the development of LabTRAC through participation on its development team and has enhanced her training skills by participating in continuing education programs. In all, she has over 11 years of relevant software implementation and support experience. Due to her intimate knowledge of [the petitioner's] products and their unique implementation, support, and training functionality, [the beneficiary] is ideally qualified for the [customer implementation and training manager] position.

The foreign entity also submitted a brief letter attesting to the beneficiary's employment in the United Kingdom since February 2001, which described her duties as software account manager as follows:

- Manage LabTrac software installation and training programs.
- Develop LabTrac training programs
- Participate in product development

On November 18, 2003, the director issued a Notice of Intent to Deny requesting evidence that the beneficiary's specialized knowledge is distinguished by some unusual qualification and not generally known by practitioners in the petitioner's industry. In addition, the director noted that evidence must be submitted to support the petitioner's assertion that the beneficiary possesses an advanced level of knowledge. The director noted that this knowledge must be set apart from elementary knowledge possessed by others. Specifically, the director asked that the petitioner provide the following evidence: (1) evidence relating to the unique methodologies, tools, programs, and/or application that the company uses with a description of how they are different from those used by other companies; (2) an explanation as to exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge; and (3) an explanation as to whether the equipment, system, product, technique or service is used or produced by other employers in the

United States and abroad. The director also requested additional evidence regarding the training required for the offered position, including: (1) a record from the foreign entity's human resources department detailing the manner in which the beneficiary has gained her specialized knowledge, including evidence of completion of training courses; (2) an indication as to the minimum amount of time required to train an employee to fill the proffered position, how many workers are similarly employed, and, of these employees, how many received training comparable to the training received by the beneficiary; (3) a description of the training to be given by the beneficiary to other workers in the United States, if any; (4) a description of the training to be received by the beneficiary in the United States, if any; and (5) a copy of the beneficiary's resume.

In response to the Notice of Intent to Deny, the petitioner submitted a letter dated December 8, 2003; its product brochure and information from the company's web site; the beneficiary's payroll records issued by the foreign entity; the beneficiary's resume; and a copy of an article that appeared in the June 2003 edition of the *Journal of Dental Technology,* which features an interview with the petitioning organization's chief executive officer. It is noted that the petitioner was not fully responsive to the director's request for evidence; the journal article, the product brochure, some of the foreign payroll records, and the beneficiary's resume were all submitted with the initial petition. 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).

In its December 8, 2003 letter, the petitioner stated that the beneficiary will not be contracted out to work for other companies but instead will work only for the petitioner with responsibility for training users of Labtrac.net and training the petitioner's training staff. The petitioner explains its customer training program as follows:

> The Labtrac training program is agreed with the customer as part of the implementation planning process with the customer. Generally, the training is conducted as three to four courses during the implementation cycle: the first of which is a three-day initial training course held in [the petitioner's] Training facility which covers the basic concepts of Labtrac and specifically includes training in the set-up of the Production steps. Subsequent courses are aimed at training Technicians in the use of the Touchscreen module, the Administration staff in the entering and completion of Cases, Reporting facilities, and Month-end processes.

In response to the director's request for documentation regarding the specialized training completed by the beneficiary, the petitioner provided the following:

> [The beneficiary] acquired her specialized knowledge of our software products and our company training methods through her work over the past two years. Please note that at present we do not keep records of time our employees spend on development and training. In addition, we do not memorialize in house training and development sessions with certificates of attendance and the like. As a small company with 9 employees we are able to track and assess our employees' progress without the need to keep formal records of time spent learning new technology.

> [The beneficiary] has been specializing in the Training and Implementation aspects of the Labtrac installation and as such is producing specific Training and Documentation materials to help in the implementation process. She has managed the training of approximately 10 users of Labtrac in the US. Since September 2002 [the beneficiary] has focused on the US version of Labtrac, following 16 months working with the UK version of Labtrac. [The beneficiary's] specialized knowledge is of the Labtrac family of products, and her skills are in training customers in the use of Labtrac. She has been responsible for ALL the training that [the petitioner] has undertaken with its customers. She gained this knowledge by working alongside Labtrac's technical development team.
>
> [The beneficiary], in addition to leading our customer training functions, will be charged with training a customer support and training representative. The training period will be at least one year before the employee can work independently. During this time, [the beneficiary] will train the employee in the key software components, the proper use of the software, and proven training methodologies and presentation techniques.
>
> * * *
>
> [The beneficiary] has gained an in-depth knowledge of the Labtrac's training and support issues which are unknown in the United States. Further, she has an advanced knowledge within the company of those issues. No other current employee of [the petitioner] has the depth of knowledge and experience in training issues that [the beneficiary] possesses.

The beneficiary's resume indicates that she has been employed with the foreign entity since 2001, initially as an "account manager" and, since 2002, as an "implementation and support manager." However, the resume does not include any specific duties performed in these positions. The beneficiary's resume further indicates that she has completed coursework in Microsoft Office 2000, Access 2000, and training delivery.

In addition, counsel for the petitioner submitted a letter dated December 12, 2003, in response to the Notice of Intent to Deny, which summarizes the beneficiary's specialized knowledge qualifications as follows:

> [The beneficiary] has developed training courses and literature concerning [the petitioner's] Labtrac products and has played a significant role in product development. Her knowledge of the Petitioner's products is advanced, uncommon and noteworthy. No other employee of [the foreign entity] possesses the depth of knowledge concerning customer training issues as [the beneficiary]. Also please note that Labtrac is a unique compilation of custom applications and technologies and supports functions that [the petitioner's] competitors do not offer. Therefore, [the beneficiary's] knowledge of customer support and training matters is also unique on an industry wide basis. [The beneficiary's] intimate knowledge of and familiarity with Petitioner's unique products is consistent with the definition of "specialized knowledge" at 8 CFR 214.2(l)(1)(ii)(D) and the interpretations of [CIS] set forth in the March 9, 1994, Memorandum of Acting Executive Associate Commissioner Puleo and the December 20, 2002 Memorandum of Associate Commissioner Ohata.

On December 23, 2003, the director denied the petition, concluding that the petitioner had failed to establish that the beneficiary would be employed in the United States in a specialized knowledge capacity. The director specifically noted the petitioner's failure to providing evidence of specialized training received by the beneficiary and further found that "no evidence was submitted to establish 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 further stated that the petitioner had not demonstrated "that the beneficiary's duties involve knowledge or expertise that make [her] key personnel for the corporation." Citing *1765, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), the director noted that "the intention of the L-1B program sets a higher bar than simply that of a highly skilled worker."

On appeal, counsel for the petitioner submits a brief dated January 14, 2004, asserting that the director's decision contains erroneous statements of fact, applies an erroneous legal standard, and fails to analyze the evidence presented. Specifically, counsel contends that the director "abused [her] discretion by requiring Petitioner to prove that the Beneficiary was a "'key employee'" in addition to having specialized knowledge. The definition of Specialized Knowledge enacted by Congress in IMMACT 90 is not limited to 'key employees.'" Counsel further contends that the precedent decision cited by the director is no longer relevant and that the director should have relied on the definition of specialized knowledge found at section 214(c)(2)(B) of the Act, along with current service policy as provided by a 1994 CIS (formerly INS) policy memorandum. Finally, counsel contends that the director failed to evaluate the evidence presented regarding the uniqueness of the petitioner's products in the United States marketplace and the beneficiary's history, experience and knowledge of the petitioner's software products. In support of these assertions, counsel submits copies of two Citizenship and Immigration Services (CIS) policy memoranda: Memorandum of James A. Puleo, Acting Executive Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994); and Memorandum of [redacted] Associate Commissioner, Service Center Operations, *Interpretation of Specialized Knowledge*, HQSCOPS 70/6.1 (December 20, 2002).

On review, the petitioner has not demonstrated that the beneficiary would be employed in the United States organization in a specialized knowledge capacity. 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.*

The petitioner has provided only a general description of the customer implementation and training manager position that conveys little understanding of the type or extent of specialized knowledge that would be required to successfully perform the purported job duties. The petitioner has described the beneficiary as being responsible for modifying existing training documentation to provide in-house and customer-based training to new users; conferring with clients to ensure successful installation of systems and applications; and training new U.S.-based staff. The petitioner also claims that it does not employ any workers in the United States who would be able to install, service, and train users of its products without substantial delay. However, the petitioner does not substantiate its claims with probative evidence, such as copies of product manuals, training documentation or other literature developed by the beneficiary or a detailed description of its training program. 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). Without supporting evidence, the AAO cannot determine the complexity or sophistication of the tasks involved or evaluate the petitioner's claim that it would not be possible for an individual to support the petitioner's products or train users without extensive training.

Counsel and the petitioner repeatedly contend that the beneficiary possesses specialized knowledge of the petitioner's software products and an advanced level of knowledge of the petitioner's customer training processes. However, as noted by the director, the petitioner failed to provide a description of the specific knowledge gained or possessed by the beneficiary as a result of her employment with the foreign entity; evidence that she received specialized training in the petitioner's products or procedures; or an indication as to how many other workers within the organization have received comparable training. In response to the Notice of Intent to Deny, the petitioner stated that the company does not keep records of time employees spend on development and training. Rather than provide an estimate of the amount of training required, the petitioner merely stated that the beneficiary gained her specialized knowledge of its software products and training methods "through her work" with the United Kingdom parent company. The description of the beneficiary's job duties with the foreign entity, which is quoted above, consists of three sentences and is not substantiated by documentary evidence to establish that the beneficiary actually created and managed training programs and documentation or participated in product development. Based on this very brief job description, the AAO cannot determine how, when or if the beneficiary acquired specialized knowledge of the company's products or procedures, or whether her knowledge can be differentiated from other employees within the company or within the industry.

The petitioner repeatedly states that the beneficiary specializes in training aspects of Labtrac installation and produces specific training and documentation materials to assist with the implementation process. However, the petitioner did not provide any examples of documentation, training materials or other work completed by the beneficiary. In addition, the petitioner attempted to differentiate the beneficiary from other employees within the foreign entity, stating that "no other employee of [the foreign entity] possesses the depth of knowledge concerning customer training issues as [the beneficiary]." Again, the petitioner provided 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. 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.

The petitioner and counsel also claim that the knowledge possessed by the beneficiary is not found in the United States because the technology was developed in the United Kingdom, and that it would take "nearly one year" to train a United States worker to undertake proposed position. The petitioner further claims that it does not employ anyone in the United States capable of installing and servicing its products or providing training to end-users. As evidence of the "uniqueness" of its products, the petitioner repeatedly refers to a June 2003 article published in the *Journal of Dental Technology*, in which executives from the foreign entity and several of its competitors were interviewed regarding their laboratory management software products. Interestingly, this article, published five months prior to the filing of the instant petition, states that the petitioner has a "new state-of-the-art training facility based in St. Louis, as well as fully qualified consultants

and trainers offering both onsite and offsite training." The petitioner's chief executive officer states in the article "[w]e have a dedicated front-line support team in the U.S. as well as a second-line team of consultants and system developers based both in the U.S. and U.K. This allows us to offer almost round-the-clock support for customer issues and software fixes."

Counsel and the petitioner clearly wish the AAO to consider this journal article as evidence in support of their claims that its products are unique and the beneficiary, based on her experience with the parent company, is therefore uniquely qualified to train the company's U.S.-based customer support staff. However, the petitioner has not provided an explanation regarding the chief executive officer's disclosure in the journal article that the company already had fully operational U.S.-based customer support and training function prior to the filing of the instant petition. The statements made by the petitioner in the article directly contradict the petitioner's assertions that it has no U.S. workers capable of installing and supporting its products in the United States.

Further, the AAO notes that the petitioner indicated that it only employed one person in the United States at the time the petition was filed, and stated that its "U.S. operations would be untenable without [the beneficiary's] employment on a full-time basis. . . . Without the ability to train US workers in the United States, we would not be able to survive as a company in that sending US workers to the UK for training is prohibitive." Contrary to the claims of the petitioner and counsel that the petitioner simply cannot operate with the beneficiary's presence in the United States, the petitioner was clearly selling, installing and providing support for its products in the United States prior to filing the instant petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

In addition, the petitioner submitted a listing of positions open within the company at the time the petition was submitted, including a technical support analyst position which will be responsible for responding to general and technical customer support calls and assisting new customers during the software implementation process. Based upon the job description provided in the job listing, this position appears to be more technically sophisticated and complex than the position offered to the beneficiary. If the petitioner is willing to hire a United States worker who is unfamiliar with the petitioner's products, and has no experience in the petitioner's industry, to provide technical support during the software implementation process, it is not clear why the beneficiary's less technical position of customer implementation and training manager would require truly specialized or advanced knowledge of the petitioner's products or processes.

Furthermore, the petitioner repeatedly asserts that the beneficiary has proprietary knowledge of the techniques and processes that are unique to the petitioner and its foreign entity. However, the products developed by the foreign entity are built on standard Microsoft technology that is commonly used throughout the United States. While the company has developed a novel compilation of different functionalities that is perhaps not currently offered by other providers of dental laboratory management software products, such as internet based applications, the petitioner has not provided evidence that its product is truly unique or explained why it

would take one year to adequately train a United States worker to perform the customer support and training functions to be performed by the beneficiary. To the contrary, it appears that any worker who was familiar with the common internet and database technologies used by the petitioner and possessed the teaching skills necessary to train end users could perform the duties to be performed by the beneficiary, given a short period of time to become familiar with the particular applications and interfaces incorporated into the petitioner's product. The AAO does not doubt that the beneficiary is a highly skilled individual who understands the petitioner's products and has successfully trained users of the product. However, there is no evidence that the beneficiary's employment is critical to the petitioner's interests to the extent that the petitioner's "U.S. operations would be untenable" without the beneficiary's services.

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 products or services, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (Citing *Matter of Raulin*, 13 (&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*, 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." 18 I&N Dec. at 52. 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 who 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 of 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). As noted previously, 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 AAO finds that the

---

[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 remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B Classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

reasoning behind *Matter of Penner* remains applicable to the current matter. 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 noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the subcommittee 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. 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. 19 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").

Thus, based on the intent of Congress in its creation 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 noted above, the beneficiary's job description does not distinguish her knowledge as more advanced or distinct among other customer support and training specialists employed by the foreign or U.S. entities or by other unrelated companies who design similar products built on the same common technologies.

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).[2] 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

[2] Again, Congress' 1990 amendments to the Act did not specifically overrule *1756, Inc.* nor any other administrative precedent decision, nor did the 1990 amendments otherwise mandate a less restrictive interpretation of the term "specialized knowledge." *See* H.R. REP. NO. 101-723(I), 1990 U.S.C.C.A.N. 6710,6749, 1990 WL 200418.

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 reasonable 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 the employee and the remainder of the petitioner's workforce.

Counsel refers to a 1994 Immigration and Naturalization Service (now CIS) memorandum written by the Acting Associate Commissioner, and asserts that this memorandum represents current CIS policy in the application of specialized knowledge criteria. This memorandum allows CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce 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." Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). 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 test 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.

The record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other similarly employed workers specializing in providing training and support for Microsoft-based database and internet applications. The petitioner stated in its December 8, 2003 response to the Notice of Intent to Deny that its "unique integration of technologies to whole system solution is unparalleled. In Dental Laboratory management software market, there is simply no comparably advanced product being sold or services at present by our competitors." The petitioner further noted that the beneficiary's training and work experience in the foreign corporation separate this knowledge from general knowledge possessed by other similarly employed workers. As the petitioner has failed to document any specific training or provide any other evidence that the beneficiary actually possesses and utilizes specialized knowledge of the petitioner's products, or provide sufficient evidence that its products are truly unique, these claims have little value. However, notwithstanding the lack of documentation, the petitioner failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

Counsel claims on appeal that the director erred by applying a requirement that the petitioner establish that the beneficiary can be deemed "key personnel" and also disputed 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 on appeal 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.

Based on the above, the AAO does not find that the director erred in partially relying on a "key personnel" criterion in making her determination that the beneficiary does not qualify for classification as an employee possessing specialized knowledge. Contrary to counsel's assertions, the [redacted] 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." Memorandum of [redacted], Acting Executive Associate Commissioner, *Immigration and Naturalization Service, Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). 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." Furthermore, since the petitioner stated that its "US operations would be untenable without [the beneficiary's] employment, it was clearly representing that the beneficiary could qualify for the benefit sought by meeting this "key employee" criteria. As noted above, the petitioner simply failed to substantiate its claims with supporting evidence.

As stated in the 1994 [redacted] 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.) Memorandum of James A. Puleo, Acting Executive Associate Commissioner, *Immigration and Naturalization Service, Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized

knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted probative evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the similar positions with other employers in the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions 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).

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 rationally determined that the beneficiary does not qualify as a specialized knowledge worker.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.