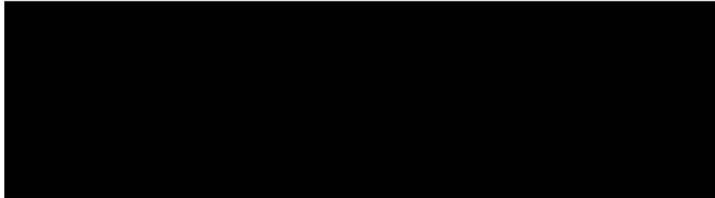


**Identifying data deleted to
prevent unauthorized
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D7

File: SRC 04 159 51249 Office: TEXAS SERVICE CENTER Date: MAR 28 2006

IN RE: Petitioner:
Beneficiary:



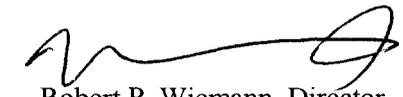
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to temporarily 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, a Georgia corporation, is a provider of technology-based solutions for supply chain management. It claims to be the parent company of [REDACTED], located in Bangalore, India. The petitioner seeks to employ the beneficiary as a senior analyst for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position requires an individual with specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director “arbitrarily defined ‘specialized knowledge’ contrary to regulation,” and utilized a definition narrower than that found at 8 C.F.R. § 214.2(l)(1)(ii)(D). Counsel further contends that the director failed to consider probative evidence documenting the beneficiary’s specialized knowledge of proprietary processes and procedures. Counsel submits a brief, but no additional evidence, in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien’s prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien’s prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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

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

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

In a May 11, 2004 letter, the petitioner described the beneficiary’s specialized knowledge and employment abroad with the petitioner’s foreign subsidiary as follows:

For the last year, the beneficiary has been working with a team of software professionals tasked to enhancing [sic] the Transportation Management System (“TMS”) – one of the three critical components of our Supply Chain Execution solution system, and integrating TMS into other . . . solutions, including our Warehouse Management System. This involved obtaining thorough knowledge of, and development of our proprietary software solutions.

As an Analyst, [the beneficiary] is key in development of Shipment and Order Services development for the new fourth generation shipment planning optimization tool using state [sic] of the art algorithms for even the most complex transportation networks, as well as keying the product to internalization. This development is so important as to be highlighted on page 21 of our 2003 Annual Report.

* * *

The beneficiary has been employed with [the foreign entity] in India since April 2003 as a Software Analyst. He has been responsible for the development of new functionalities for key modules of our proprietary Transportation Management application products (TMS). This is a position which has involved specialized knowledge of our proprietary software solutions. . . .

The petitioner provided the following description of the beneficiary's proposed position in the United States:

We wish to transfer [the beneficiary] to the United States as a Senior Analyst. He will continue to work specifically on the TMS of our Transportation Management application products to develop and extend those offerings. He will utilize the proprietary knowledge he gained during his employment with our wholly owned subsidiary on this same product line to continue with the development and enhancement of our product lines.

This is a position which requires detailed knowledge of our proprietary software systems and implementation methodologies.

The petitioner stated that it offers three principal product groups, Warehouse Management, Transportation Management, and Trading Partner Management, which are integrated into a supply chain execution system. The petitioner indicated that in order to protect its proprietary products and rights, it enters into confidentiality agreements with its employees, consultants, clients and potential clients.

Finally, the petitioner submitted a May 11, 2004 letter from its foreign subsidiary confirming that the beneficiary was hired as a software analyst on March 31, 2003, and has been performing the following duties:

[H]is responsibilities in the TP&E (Shipment & Order Services) team included understanding the customer's requirements, [d]esigning solutions and [d]eveloping them. Has worked on Core Shipment and Order services and Globalization for TMS, using J2EE, JSP, Oracle, XML, Webmethods and other Java related Technologies.

On May 26, 2004, the director requested additional evidence related to the beneficiary's claimed specialized knowledge. Specifically, the director instructed the petitioner to:

Submit evidence relating to the unique methodologies, tools, programs, and/or applications that your company uses. . . . Please describe in detail how these are different from the methodologies, tools, programs and/or applications used by other companies.

Explain in more detail, exactly what is the equipment, system, product, technique, or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad.

Please submit a record – as opposed to merely a letter- from [your] human resources department detailing the manner in which the beneficiary has gained his/her specialized knowledge. Documentation should indicate the pertinent training courses in which the beneficiary has been enrolled while working for your company, as well as the duration of the courses, the number of hours spent taking the courses each day, and the certificates of completion of these courses.

Indicate the minimum amount of time required to train an employee to fill the proffered position. Specify how many workers are similarly employed by your organization. Of these employees, please indicate how many have received training comparable to the training administered to the beneficiary.

If the specialized knowledge was attained through the course of on-the-job experience, please clarify exactly what knowledge was attained through the beneficiary's past employment with the company. For each facet of specialized knowledge, please explain how the particular knowledge attained at that particular time was different from knowledge attained by individuals in the identical or similar position for the company.

The director noted that the evidence submitted with the initial petition did not establish that the beneficiary's knowledge is beyond that which is normally held by individuals in similar occupations. The director noted that "[k]nowledge of proprietary systems or software does not equate to specialized knowledge when there is no evidence that the system or software are fundamentally different from other, similar systems or software."

In a response dated June 11, 2004, counsel for the petitioner indicated that some of the requested evidence, such as detailed records pertaining to the beneficiary's training, was not available. Counsel emphasized that the petitioner spent \$27.4 million in research and development in 2003, a portion of which was allocated to enhancement of its Transportation Management Solution. Counsel noted that the beneficiary was a member of the team that worked on these enhancements for the previous year and stated: "He obtained his specialized knowledge in part because he helped create the solution (which is proprietary in nature) and in part because in order to do his work on changes to these modules of an integrated solution, he had access to [the petitioner's] proprietary technology as part of his development efforts."

The petitioner submitted a June 10, 2004 letter from its director, human resources, who further described the beneficiary's work assignment with the foreign entity:

Since his hire, [the beneficiary] has been working on the development of enhancements for Release 2004R1 of our Transportation Planning & Execution for Open Systems (TPnE). He gained functional and technical knowledge as part of the development of these enhancements. His work has included TMS Internationalization. He has worked with a U.S. lead and together they designed and developed the Internationalization framework for this offering. The U.S. lead has since left the company, and [the beneficiary] is now the only resource within [the petitioning company] with detailed knowledge and expertise in this particular area. His latest work has been on Shipment and Order Services which are basic elements of the TPnE product and as the result of his work he has become well versed in this area.

To document the proprietary nature of the products on which [the beneficiary] has worked, we are attaching the Release Notes prepared for customers, employees, partners, and prospective customers on TPnE. This was released in April, 2004.

The petitioner indicated that most of the petitioner's development work is performed in the United States, while "certain development tasks" are performed by its Indian subsidiary, which employs 40 developers working on product enhancements and new products, as well as 30 software quality assurance analysts.

The petitioner stated that it takes "six to nine months minimum" for a qualified developer to obtain detailed specialized knowledge of its products, but emphasized that the beneficiary has been working on "critical enhancements which help shape our entire Supply Chain Management and Execution offerings," and which will be shared with developers in the United States.

To demonstrate the proprietary nature of the company's products, the petitioner submitted general product brochures, highlighted pages of its latest annual report which discussed enhancements to the Transportation Procurement application, and submitted the above-referenced Release Notes for the Transportation Planning & Execution Systems for Open Systems, Release 2004R1.

The director denied the petition on June 28, 2004, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position requires an individual with specialized knowledge. The director observed that the proposed duties outlined by the petitioner do not appear to be significantly different from those of any other senior analyst employed by the petitioner or any other software development company in the petitioner's industry. The director also noted that the petitioner had submitted no supporting evidence to establish that the beneficiary's knowledge is uncommon, noteworthy or distinguished compared to other employees in the petitioning company or in the beneficiary's field. The director found that the petitioner had not furnished evidence to demonstrate that the beneficiary's duties involve knowledge or expertise that make him key personnel to the company, and suggested that the beneficiary is merely a "highly skilled worker."

In an appeal filed on July 26, 2004, counsel for the petitioner asserts that the director utilized a definition of "specialized knowledge" narrower than that found in the regulations, arbitrarily defined "specialized knowledge," and failed to apply the definition of specialized knowledge found at 8 C.F.R. § 214.2(l)(1)(ii)(D). Counsel further contends:

The Director failed to consider probative evidence (not only from supporting letters and documents, but from annual report) that the beneficiary had "special knowledge" of critical processes and procedures of the organization, that the petitioner spent over \$20,000,000 developing those processes, and that the processes were complex and proprietary as documented by detailed internal specifications.¹

Counsel asserts that the director referred to the "plain meaning" of specialized knowledge as knowledge "beyond the ordinary," rather than relying on the statutory definition, and "ignore[d] the knowledge beyond the ordinary of an Analyst who actually developed the process and function." Counsel concludes that the

¹ Counsel further observes that the director referred to *1756, Inc. v. Attorney General*, 745 F.Supp. 9, 15 (D.D.C. 1990), in her Notice of Decision, but failed to provide a citation for the case. The referenced decision and its relevance to the instant matter will be included in the discussion below.

evidence submitted established that the beneficiary has “detailed and specialized knowledge of the processes of the petitioner.”

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

As a preliminary matter, the AAO acknowledges counsel’s suggestion that the director relied on a definition of “specialized knowledge” that is narrower than or contrary to the regulatory definition. It must be noted that in making a determination as to whether knowledge possessed by a beneficiary is special or advanced, CIS relies on the statute and regulations, legislative history and prior precedent. This approach allows CIS to take into consideration the original intentions of Congress in creating the specialized knowledge classification, as well as prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. Upon review of the record, there is no indication that the director disregarded the statutory definition of specialized knowledge in adjudicating this matter or otherwise applied a narrower definition than that intended by Congress or established by precedent decisions.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner’s description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish that it involves specialized knowledge. *Id.*

In the present matter, the petitioner has provided only general descriptions of the beneficiary’s current and proposed roles as a software analyst that convey little understanding of the type or extent of specialized knowledge that would be required to successfully perform the purported job duties. For example, the petitioner’s description of the beneficiary’s duties in his proposed role as a senior analyst consists solely of a statement that “he will continue to work specifically on the TMS of our Transportation Management application products to develop and extend those offerings” utilizing “proprietary knowledge he gained during his employment with our wholly owned subsidiary on the same product line.” This vague description does not assist the AAO in identifying the actual duties to be performed by the beneficiary in the United States or specifically identify the need for the services of an individual with specialized knowledge of the petitioner’s products, or an advanced knowledge of the petitioner’s processes. The petitioner cannot satisfy its burden of proof with a blanket assertion that the U.S. position requires proprietary knowledge. As noted above, the regulations require a detailed description of the duties to be performed. *Id.*

With respect to the beneficiary’s claimed employment abroad in a position involving specialized knowledge, the petitioner submitted a letter from the foreign entity indicating that the beneficiary had worked on its “TP&E (Shipment & Order Services) Team” where he “designed and developed solutions” using such standard programming languages and technologies as J2EE, JSP, Oracle, XML, Webmethods and “other Java related [t]echnologies.” Without further explanation, this job description could describe any software developer or analyst trained in web-enabled database technologies.

The petitioner also noted that the beneficiary was a member of a team responsible for developing enhancements to its Transportation Management System and stated that the beneficiary is “key in the development for the new fourth generation shipment planning optimization tool using [state] of the art algorithms to plan for even the most complex transportation networks, as well as keying the product to internalization.” In response to the director’s request for additional evidence, the petitioner indicated that the beneficiary had developed enhancements for TPnE, participated in developing a “TMS Internationalization” framework with a U.S.-based lead developer, and worked on “Shipment and Order Services.”

However, the petitioner provided no further clarification of the beneficiary’s function within these various projects, no clear explanation of what the beneficiary actually developed, the complexity involved, or the knowledge required to perform the vaguely described tasks. Due to the lack of detail in the petitioner’s description of the beneficiary’s foreign and proposed employment, it is unclear exactly what role the beneficiary has played in the development of the TPnE release or TMS Internationalization, what specialized knowledge the beneficiary possesses, how this knowledge would be applied in the proffered position, or what actual duties he would be performing in the United States. 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)).

Upon review of the limited descriptions and evidence submitted in support of the initial filing, the director issued a very specific request in an attempt to identify whether the beneficiary’s knowledge was advanced in comparison to other similarly qualified employees. Specifically, the director instructed the petitioner to provide evidence regarding: the length of time and amount of training necessary for an employee to work in the beneficiary’s position, a record detailing the manner in which the beneficiary has gained his specialized knowledge, the types of training courses and/or on-the-job training the beneficiary received while working abroad, the type of training he would receive from and/or provide to fellow employees in the United States, the number of similarly employed workers within its organization, and the number of workers who have received training similar to that provided to the beneficiary. The director also advised the petitioner that knowledge of proprietary systems or software alone does not equate to specialized knowledge, and specifically requested that the petitioner describe in detail how its methodologies, tools, programs and/or applications differ from those used by similar companies.

In response, counsel indicated, without explanation, that “some of what [the director] asked for is not available.” Counsel stated that the beneficiary obtained his specialized knowledge in part because he “helped create” the Transportation Management Solution, and “in part because in order to do his work on changes to these modules of an integrated solution, he had access to [the petitioner’s] proprietary technology as part of his development efforts.” Similarly, rather than responding to the director’s detailed request for information, the petitioner indicated: (1) that it employs 40 software developers working on product enhancements in India, but did not specify how many developers have knowledge similar to that held by the beneficiary; (2) that the beneficiary has “specialized knowledge” of its products because he spent the last year “developing enhancements to parts of those products” and that (3) the beneficiary is “now the only resource within [the petitioner’s group] with detailed knowledge and expertise in [TMS Internationalization.]” Rather than submitting the requested detailed description of the how the petitioner’s software and products differ from

those offered by its competitors in the industry, the petitioner submitted what it referred to as “very general product brochures” and highlighted a few pages of its annual report that refer to its Transportation Management solution in order to “document the proprietary nature of our products.”

Despite counsel’s reference on appeal to the “probative evidence” submitted by the petitioner, the petitioner’s submission was largely non-responsive to the director’s request and did not provide the required level of detail or supporting evidence. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the petitioner’s failure to provide a detailed response to the director’s request for evidence, the record is devoid of evidence that would substantiate the contentions of the petitioner and of counsel. As stated by the director in the request for additional evidence, inside knowledge of a company’s products does not automatically constitute special or advanced knowledge. It is to be expected that on-the-job training completed with any company will provide an employee with knowledge that is germane to that organization. As in the present matter, when a petitioner asserts that a beneficiary has experience with proprietary products or procedures, CIS must carefully evaluate the claimed knowledge and the depth of the beneficiary’s experience in order to determine whether it rises to the level of specialized knowledge as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(D). Therefore, the petitioner’s failure to provide evidence of the training received and the manner in which the beneficiary’s knowledge was distinguished from that of other software analysts prohibits a finding in the petitioner’s favor. Although specifically requested by the director, the petitioner did not provide any evidence of the beneficiary’s training, experience, daily duties, or level of expertise relative to the remainder of its workforce. Accordingly, the petition must be denied. 8 C.F.R. § 103.2(b)(14).

Furthermore, the limited information the petitioner provided with respect to its on-the-job training requirements precludes a finding that the beneficiary was employed abroad in a position involving specialized knowledge for one continuous year in the three years preceding the date of filing the instant petition as required by 8 C.F.R. § 214.2(l)(3)(iv). The beneficiary in this matter was hired by the foreign entity on March 31, 2003, and the instant petition was filed on May 17, 2004. Based on the petitioner’s representations in its June 10, 2004 letter, it takes a qualified developer “six to nine months minimum” to obtain “detailed functional specialized knowledge” of the petitioner’s products. Since the beneficiary had been employed by the foreign entity for less than 14 months, and there is no evidence in the record to indicate that he had prior experience with the petitioner’s products, it is reasonable to assume that he did not develop “specialized knowledge” of the petitioner’s products until at least six months after he commenced employment with the foreign entity, and no more than eight months prior to the filing of the instant petition. In addition, it is noted that the petitioner has not explained how the beneficiary was able to work on “critical enhancements” of its products for the previous year without first completing the six to nine-month period of employment required

to develop “detailed functional specialized knowledge” of such products. Accordingly, the petitioner has not established that the beneficiary was employed in a qualifying capacity for one year. 8 C.F.R. § 214.2(l)(3)(iv). For this additional reason, the petition cannot be approved.

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)).² As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business’ operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized 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*, “[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F.Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for “key personnel.” See generally, H.R. 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

² 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, including *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

"important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the Congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other software analysts is its assertion that the beneficiary's "work has included TMS Internationalization." Specifically, the petitioner states that the beneficiary and a U.S.-based lead developer developed the "Internationalization framework" for TMS, and that, following the departure of the U.S. developer, the beneficiary is "the only resource" within the petitioner's international organization with "detailed knowledge and expertise in this particular area." The petitioner has submitted no explanation or documentary evidence to corroborate this assertion, or to otherwise clarify the importance of this claimed exclusive knowledge. The petitioner indicated that most of its development work is performed by the U.S. company, which appears to employ over 300 research and development personnel. Overall, given the size of the petitioning company, the nature of its business, its descriptions of its integrated products and solutions, and the limited information provided regarding the beneficiary and his experience, the AAO does not find it credible that the beneficiary, who has been employed with the petitioner's group for only 13 months, is the "only resource" within the petitioner's international organization who possesses knowledge of and/or has experience with a major component of one of its primary product offerings. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. See, e.g., *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, supra* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with

specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also*, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

The record does not distinguish the beneficiary's knowledge as different or more advanced than the knowledge possessed by other similarly employed software analysts supporting development of the same types of products for similar companies in the petitioner's industry. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner* at 53. Likewise, the petitioner has submitted no evidence that would distinguish the beneficiary from any other software analyst employed within its international organization. Based on the petitioner's assertions, anyone who has worked as a software analyst with the petitioner's group for six to nine months would possess "specialized knowledge" of its products sufficient to prepare them to perform product enhancements and related duties.

Moreover, the petitioner offered no information regarding other employees working for the foreign company, such that the director or the AAO could make a meaningful comparison between the beneficiary's claimed "specialized knowledge" and the knowledge possessed by other workers within the petitioner's organization. Although knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products and processes. The petitioner identifies the beneficiary as a member of a team of software developers working on a specific product enhancement project, but offered no information regarding the number of employees on the team, the beneficiary's specific role within the team, or how the India-based team fits into the overall product development function. The lack of evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's products or procedures as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. While it may be correct to say that the beneficiary is a skilled and experienced employee, the petitioner has not established that the beneficiary rises to the level of a specialized knowledge or "key" employee, as contemplated by the statute. *See Matter of Penner*, 18 I&N Dec. at 53.

Finally, even if the petitioner had established that the beneficiary possesses specialized knowledge, the record contains a minimal description of the duties to be performed by him in the United States and is insufficient to establish that the petitioner would employ him in a specialized knowledge capacity. Based on the record, it is impossible to classify the beneficiary's knowledge of the petitioner's software products and systems as advanced or special or to find that the beneficiary's role is of crucial importance to the organization. As stated previously, 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.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized

knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

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

ORDER: The appeal is dismissed.