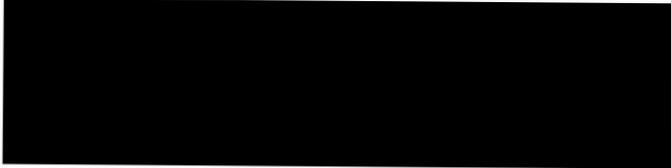




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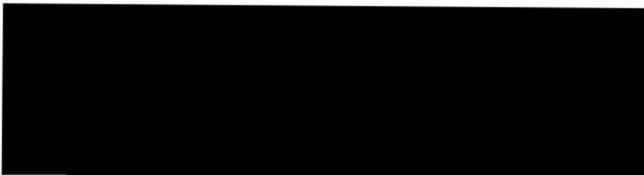
D-7

File: SRC 03 046 51723 Office: TEXAS SERVICE CENTER Date: **MAR 28 2006**

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

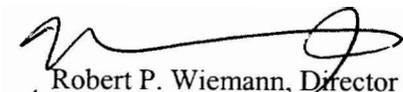
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 Texas corporation, is a provider of telemarketing and customer communication solutions. It claims to be a subsidiary of [REDACTED] and an affiliate of the beneficiary's foreign employer, [REDACTED] located in Mumbai, India. The petitioner seeks to employ the beneficiary as a software consultant 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 additional evidence submitted on appeal establishes that the beneficiary will be employed in a capacity involving specialized knowledge. Specifically, counsel asserts that the beneficiary possesses knowledge of a "customized and proprietary software application" unique to the foreign entity. Counsel submits a brief and 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(1)(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 (1)(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.

The nonimmigrant petition was filed on or about December 4, 2002. In a November 22, 2002 letter, the petitioner described the beneficiary's proposed position as a software consultant as follows:

In this capacity, his services will include, but not be limited to design, development / maintenance and implementation of software applications. Job responsibilities will include but not be limited to the following:

- Service user and system Problem Issues s [sic]
- Perform standards work around as required
- Provide data & emergency bug fixes as required
- Resolve procedural issues
- Install application patches as required
- Perform root cause analysis as required

He will also be responsible for handling the complete SAS and EIS functions for [the petitioner] He will design, analyze statistical data to forecast future trends in the industry, gather data on competitors, analyze pricing. [The beneficiary] will be instrumental in leading the company to expand operations in international markets and help [the petitioner] analyze them to identify emerging trends and opportunities to carve a niche in the global market.

The requirement for this position is 4 years relevant work experience in the field of software consultancy, with an equivalent functional experience. Academically, the incumbent should be with a Bachelor's degree in Computer Science or related field.

The petitioner indicated that the beneficiary's qualifications include a bachelor of computer science degree, a Sun certification in Java Platform 2 from Sun Microsystems, India, and work experience as an information technology professional since 1997. The petitioner noted that the beneficiary had led a team of four people to create software to implement a company wide Internet system for the petitioner's group in India.

The petitioner failed to specifically address the beneficiary's qualifications as a nonimmigrant intracompany transferee with specialized knowledge.

The petitioner also submitted a November 14, 2002 letter signed by the chief operating officer of the beneficiary's foreign employer, who stated that the beneficiary joined the foreign entity on December 23, 2000. He indicated that the beneficiary was being transferred to the U.S. entity to undertake "various assignments" and provided the following information regarding the beneficiary's foreign employment:

[The beneficiary] has entered [the foreign entity] with a background as a Sun Certified Consultant for E-Business related Application Development. He has been responsible for the following:

1. Customer Relationship Management Portal of Essar Steel
2. Web based Distribution Centre Business Application Development
3. Executive Information system of the mySAP site

The petitioner also provided the beneficiary's detailed resume, which includes a description of six projects undertaken by him as a team member and team leader with the foreign entity. According to the resume, the beneficiary's most recent project, commenced in July 2002, was as team leader for a Web Conferencing project, using SQL Server 7.0, Windows Media Technologies, Windows Media Encoder 7.1, Visual Basic 6.0 with OCX/Winsock technology. The beneficiary indicated that his responsibilities included design, technology decision and Web Conferencing Module Development. The beneficiary described the project and its current status as follows:

This is web based web conferencing where user can view 5 web cams at once in single browser window. There is a general as well as private chat with voice capabilities. Advanced windows media technology is used. User just have to install Windows Media Player separately. This can be used in any version of IE.

Using windows media technology, the development is over. Currently we are transferring it into Java using Java Media Framework for better performance and platform independence. Java Media Framework is a set of classes released by Sun Microsystems recently. It supports all the standards (H.263, H.261) of Audio/Video Conferencing over IP. Moreover it uses RTP (Real Time Protocol) to transmit data over the net.

According to the beneficiary's resumes, his proficiencies include C, C++, Java, Visual Basic 6.0, ABAP/4, HTML, JavaScript, VBScript, Dreamweaver 4.0, Visual Studio 6.0, Jbuilder 4.0, Microsoft Access, Microsoft SQL Server 7.0, Oracle 7.1/8.0/8.01, ASP, JSP, Servlets, JavaBeans, Java Media Framework, COM/OCX, JavaRFC, JDBC, Socket Programming, SAS-Base 7.0, SAS/ACCESS 7.0, and EIS/CPS 5.2.

The director subsequently issued requests for additional evidence on June 19, 2003 and on September 16, 2003¹, instructing the petitioner to submit a definitive statement describing the beneficiary's job duties and evidence of how the beneficiary meets the requirements for employment in a specialized knowledge capacity.

In an August 12, 2003 letter, the petitioner stated that the beneficiary's "specialized experience and knowledge" includes:

- Sun Certified Java Professional
- **Development of CRM solutions** in a call center environment
- Development of custom interface to bridge more than one applications with different platform
- Telecommunication background specializing in data transmissions
- 5 years of project management experience

The petitioner explained that it operates three large call centers in the United States and India, and emphasized the beneficiary's ability "to effectively communicate and manage projects across two very diverse cultures." Specifically, the petitioner explained the beneficiary's proposed duties as follows:

His primary job responsibility is to oversee the design, development and implementation efforts of 3 software developers located in both the US and in India.

These development efforts include but are not limited to proprietary web-based CRM solutions, on-time reporting applications, Visual Basic scripts, and host/client connectivity across all three call center locations.

[The beneficiary's] past experience in developing software applications with [the foreign entity], an Indian based company specializing in web-based CRM solutions, uniquely qualifies him for his current position with [the petitioner] in several ways. First, [the beneficiary] comprehends the software development lifecycle differences between the two cultures, which in turn enables him to deploy cultural based applications for our US and Indian based call centers. Secondly, his experience in managing projects and staff members in both the US and India enables him to effectively delegate and assign projects based on skills

¹ The AAO notes that the record, which is a re-constructed file, does not contain a copy of the June 19, 2003 request for evidence referenced by the petitioner. However, the responses to both requests for evidence, dated September 16, 2003 and October 15, 2003, respectively, are identical and address the same issues, thereby suggesting that the same request for evidence was issued twice.

sets, abilities and the end user. As being a Sun Certified Java Professional along with 4 years of extensive experience in developing Web Based Application using Java makes him the most suitable candidate for the current position offered to him.

[The beneficiary] played an integral role in the development of external client/server web-based applications designed to interface with third party software such as SAP. These applications not only reduced the cost of operations dramatically but also provided a robust interface between multiple application platforms. [The beneficiary] will lead a team of 4 software developers to design and implement similar applications that could be ultimately integrated with the existing application used in India.

[The beneficiary] will also play an integral role in the integration efforts for our new 200-seat call center located in Bangalore, India. A major development task will be the seamless integration of the US and India operations. This integration is essential for the overall management and business model designed for [the petitioner]. [The beneficiary's] experience in developing applications in India and his unique ability of designing interfaces for both the US and Indian end-user is a key point for his selection.

Finally, the petitioner outlined the following duties to be performed by the beneficiary as a "senior software developer":

- Migration of outbound campaigns to new dialing platform CONCERTO
- Design & Development of Reporting tool
- Design & Development of Web Interface for Online Reporting
- Manage a team of 3 software developer
- Carry out daily report and return files transmission
- Design and Development of process for new outbound/inbound campaign creation.

The petitioner also outlined the job duties of one India-based and two U.S.-based software developers who would assist the beneficiary with these responsibilities.

The director denied the petition on December 23, 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 software developer and therefore do not appear to warrant the expertise of someone possessing truly specialized knowledge. The director acknowledged that the beneficiary appears to be well versed in various software systems, but found the beneficiary's experience to be common among those who are similarly employed in the petitioner's industry.

In an appeal filed on January 21, 2005, counsel for the petitioner asserts that the director erred in concluding that the beneficiary lacks the requisite specialized knowledge for this visa classification and claims that the beneficiary "developed the unique software utilized by [the petitioner] and is needed to help implement its use within the company." Counsel contends that new evidence submitted on appeal establishes that the

beneficiary will be employed in a capacity that involves specialized knowledge. In support of the appeal, the petitioner submits a letter from its chief executive officer, a letter from its chief technology officer, a letter from the foreign entity's chief technology officer, and an overview of "Tele Web Conferencing" prepared by the beneficiary. Counsel claims that the submitted exhibits demonstrate: (1) that the Tele Web Conferencing software systems is a customized and proprietary software application unique to the foreign entity; (2) that the foreign entity holds copyrights to the software system and there is no comparable software system in the United States; (3) that the beneficiary conceptualized and developed the Tele Web Conferencing software system in India and his "special knowledge" of the system is required to integrate and implement the system into the petitioner's U.S. operations; and (4) the beneficiary therefore has "specialized knowledge" of a technique, interest or process of the Petitioner's organization. Counsel asserts that the beneficiary is required to enter the United States to lead the development and integration of the Tele Web Conferencing software system into the petitioner's operations and concludes that the beneficiary is qualified for the benefit sought.

A January 3, 2005 letter from the foreign entity's chief technology officer describes some of the features of the Tele Web Conferencing software application, noting that the foreign entity registered copyrights of the product in India and planned to launch similar support to external clients. The chief technology officer emphasizes the beneficiary's "major role in designing and developing, Remote Desktop sharing and Webcast of live webcam to online customer," his software development skills, and his knowledge of web based applications, dialer and communication media. In a January 31, 2005 letter, the petitioner's chief executive officer notes that the beneficiary was invited to the United States to demonstrate the Tele Web Conferencing software that he implemented in the foreign entity's helpdesk center. The petitioner's chief executive officer notes that the software system was so well received, the petitioner decided to integrate the system and requires the beneficiary's services in the United States to implement it. Finally, in a January 31, 2005 letter, the petitioner's chief technology officer states that the beneficiary conceptualized the Tele Web Conferencing application and notes that it has "unique features" which will enhance the petitioner's telemarketing support services. He states that he has "never seen such a complete product developed keeping Customer Support requirements in mind." He emphasizes that the product is "solely conceptualized and designed" by the beneficiary, and states that it "would be next to impossible to implement this product in [the petitioning company] without the hands on work and Project Management skills of [the beneficiary]."

Finally, the petitioner submits a five-page overview of the Tele Web Conferencing application prepared by the beneficiary, which describes its features as follows:

Tele Web Conferencing is a web based web conferencing system. It has a capability to communicate with Inbound/Outbound dialer in order to provide a Live Telemarketing Support through web conferencing. It has a unique feature of Remote Desktop Monitoring. That enables Telemarketing Agent to share his desktop with online customer or take a control of customer's desktop with the customer's permission.

The document indicates that the product is based on Java on Unix and .NET for Windows, with a Java 2 Platform for Unix Server and a .NET Framework for Windows Server, and requires clients to have an Internet connection and Internet Explorer.

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.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish that it involves specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. See *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).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.

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

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

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.")

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 discussed below, the beneficiary's job description does not distinguish his knowledge as more advanced or distinct among software developers employed by the foreign or U.S. entities or by other unrelated companies who design similar types of products based on common industry standards. The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F.Supp. 9, 15 (D.D.C. 1990).

The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, H.R. Rp. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the Congressional record related to that term, the AAO must make

comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

In the present matter, the petitioner has provided only general descriptions of the beneficiary's current and proposed roles as a software developer or consultant 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 initially indicated that the beneficiary would service user and system problem issues, perform "standard work around" as required, provide data and emergency bug fixes, resolve procedural issues, install application patches, perform root cause analysis, and "handle the complete SAS and EIS functions." This description does not 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. In fact, the petitioner stated that the position requires a bachelor's degree in computer science and four years of relevant work experience in software consultancy, without making reference to the need for previous experience with the petitioner's group of companies. 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)). 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).

With respect to the beneficiary's claimed employment abroad in a position involving specialized knowledge, the petitioner submitted a letter from the foreign entity emphasizing that he is qualified as a Sun Certified Consultant for e-business application development, and has worked on three projects, a Customer Relationship Management Portal, a web based distribution centre business application, and an "Executive Information System." 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 foreign entity, what applicability his foreign assignments have to the proposed U.S. position, 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. 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. Although the petitioner provided the beneficiary's resume, which provides more detail regarding his specific assignments with the foreign entity, his duties and technical proficiencies, as described in the resume, do not appear to be unusual for a software professional hired to develop software applications built on industry-standard technologies. Without further explanation, the job descriptions provided for the beneficiary's current and proposed roles could describe any software developer trained in web-enabled database technologies.

Upon review of the limited descriptions and evidence submitted in support of the initial filing, the director requested a definitive description of the beneficiary's duties and evidence to establish that the beneficiary's current and proposed positions require the services of an individual possessing specialized knowledge.

In response, the petitioner provided a different, but almost equally vague, description of the beneficiary's proposed duties, indicating that he would be responsible for migrating "outbound campaigns" to a new dialing platform, designing and developing a "reporting tool," designing and developing a "Web Interface for Online Reporting," managing three software developers, carrying out "daily report and return files transmission," and designing and developing a process for "new outbound/inbound campaign creation." The petitioner did not identify what specific tasks he would perform or identify how the performance of these duties requires specialized knowledge of the petitioner's products, techniques or processes. The petitioner also stated that the beneficiary would oversee the development of "proprietary web-based CRM solutions," on-line reporting applications, Visual Basic Scripts, and host / client connectivity across the petitioner's three call center locations. The petitioner provided no further explanation or documentation regarding its "proprietary" solutions, no description of the types of tools and applications to be developed by the beneficiary, their complexity, their relevance to the petitioning organization, or whether these duties would require the beneficiary to utilize knowledge and experience specific to the petitioner's group of companies. The petitioner's blanket assertion regarding the beneficiary's "proprietary" knowledge will not satisfy its burden of proof. 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.

Rather than providing the requested detailed description of the beneficiary's duties and the claimed specialized knowledge, the petitioner emphasized the beneficiary's ability to "comprehend the software development lifecycle differences between the two cultures, which in turn enables him to deploy cultural based applications for our US and Indian based call centers." The petitioner also referred to the beneficiary's "unique ability of designing interfaces for both the US and Indian end-user" as a "key point for his selection." The petitioner did not, however, explain the claimed "cultural" differences in the software development lifecycle, provide evidence that the beneficiary actually had prior experience in designing applications for U.S.-based users, or indicate how knowledge of these differences would constitute specialized knowledge of the petitioner's products or processes for purposes of this visa classification. The petitioner also emphasized the beneficiary's project management experience and Sun Certified Java Professional qualification as qualifying him for his current position, which further supports a conclusion that any experienced software developer with a background in Java and related web technologies, and perhaps some international experience, could perform the duties of the proposed position. In sum, the petitioner's response to the request for evidence was insufficient to establish that the beneficiary possesses special knowledge of the company product and its application in international markets or an advanced level of knowledge of the processes and procedures of the company. *See* section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B).

On appeal, counsel offers no specific objections to the director's findings, but simply disagrees with the director's decision and asserts that the additional evidence offered on appeal establishes that the beneficiary will be employed in a position requiring specialized knowledge. The evidence submitted on appeal makes a new case for the beneficiary's claimed specialized knowledge based upon his "conceptualization and development" of the Tele Web Conferencing software application, and identifies the implementation of this application as the primary reason for his transfer to the United States. The AAO notes that, other than a reference in the beneficiary's resume, none of the letters or supporting documents submitted with the initial petition or in response to the director's request for evidence make any reference to "Tele Web Conferencing." Considering that the petitioner now claims that the beneficiary's specialized knowledge of this software alone

qualifies him for the benefit sought, and is in fact the sole purpose for his transfer to the United States, the AAO finds the petitioner's earlier omission of this "specialized knowledge" to be highly conspicuous and questions the validity of the arguments and evidence submitted on appeal. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO need not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO will give limited weight to the new letters submitted by the petitioner and the foreign entity on appeal.

Counsel's and the petitioner's assertions that the beneficiary's specialized knowledge is based on his conceptualization and development of the "Tele Web Conferencing" software application that will be implemented in the United States are not persuasive for several reasons. First, as discussed above, the petitioner had two previous opportunities to provide a detailed description of the beneficiary's duties, the reasons for his transfer to the United States, and an explanation regarding his claimed specialized knowledge. When describing his duties with the foreign entity and his proposed duties in the United States, the petitioner described a generic software developer position that appeared to require experience in web and database technologies that are common in the industry rather than specific to the petitioner's organization. The petitioner failed to describe any specific assignment or purpose for the transfer of the beneficiary to the United States, or any specific experience that prepared him for the U.S. assignment, and instead emphasized his formal education, project management experience, and his ability to understand "cultural" software requirements. Notably, neither the petitioner nor the foreign entity mentioned the "Tele Web Conferencing" system, and in fact stated that he would assume "various assignments" in the United States. However, the petitioner now states that the petitioner's desire to implement this system in the United States was the primary reason for seeking the beneficiary's transfer to the United States. 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).

Second, even if the AAO accepted that the purpose of the beneficiary's transfer was to implement the Tele Web Conferencing System, the petitioner has not established that knowledge of this system would constitute "specialized knowledge" or that the beneficiary actually possessed such knowledge at the time the petition was filed. According to the beneficiary's resume and the product overview provided, the system itself is based on standard Java and Windows Media technologies. Although the petitioner states that the system has some unique features, the petitioner has not adequately described how this system differs from any other web conferencing system, such that a similarly trained software specialist would be unable to implement it without having participated in its development. The petitioner also failed to provide evidence that the system has been copyrighted, nor did it provide any evidence to support its statements that no other system of its kind is available in the United States. 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. Further, at the time of filing, it appears that the system had not been fully developed or implemented by the foreign entity. According to the beneficiary's resume, he began working on the project on or about July 15, 2002. He was admitted to the United States in B-1 status on September 4, 2002 and was still in the United

States when the petition was filed in December 2004. While it is possible that he later returned to India to complete development of the system, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner has not submitted evidence on appeal to overcome the director's well-founded conclusions.

Overall, the record does not distinguish the beneficiary's knowledge as different or more advanced than the knowledge possessed by other similarly employed software developers or consultants 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 "specialized knowledge." *See Matter of Penner*, 18 I&N Dec. at 53. 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 and leader of various teams of software developers working on specific product enhancement projects, but offered no information regarding the number of software developers working for the Indian company in similar assignments. 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 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.** For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the U.S. company and the beneficiary's foreign employer have a qualifying relationship as required by 8 C.F.R. § 214.2(l)(3)(i). In the

initial petition filing, the petitioner claimed to be a wholly-owned subsidiary of [REDACTED] but initially failed to identify how the U.S. company is related to the Indian company that employs the beneficiary, [REDACTED]. Accordingly, the director requested evidence of the current ownership and control of the beneficiary's foreign employer. In response, the petitioner indicated that [REDACTED] Information Technology is owned by [REDACTED] which is in turn owned by the "Ruia Family," while [REDACTED] the petitioner's parent company is also owned by the [REDACTED] Family." While such an ownership structure could establish an affiliate relationship between the petitioner and [REDACTED] [REDACTED] pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(L), the supporting documentation submitted does not support a determination that the two companies have a qualifying relationship.

In response to the director's request for evidence, the petitioner submitted an incorporation certificate for its parent company [REDACTED] indicating that it is 100 percent owned by [REDACTED] Ltd., which is in turn owned by [REDACTED]. The petitioner submitted a statement from the director of [REDACTED] [REDACTED], indicating that [REDACTED] owns 514,711 out of 514,717 shares of the company, and a statement from the director of [REDACTED] which indicates that seven individuals, all of whom have the surname [REDACTED] own the 55,000 issued shares of that company. According to the director's statement, [REDACTED] holds only 1,309 of 55,000 shares, or a 2.38 percent interest in the company. Accordingly, the U.S. entity and the beneficiary's foreign employer are not owned and controlled by the same parent or individual, or by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. §§ 214.2(l)(1)(ii)(L)(1) and (2). Although counsel claims that the [REDACTED] family" ultimately owns the petitioning company and the overseas company this familial relationship does not constitute a qualifying relationship under the regulations. For this reason, the petition may not be approved.

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.