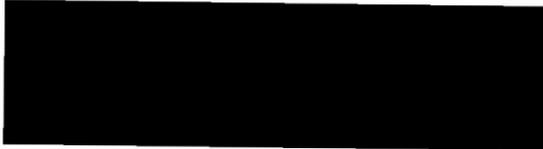




U.S. Citizenship
and Immigration
Services

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

27



File: WAC 04 222 53176 Office: CALIFORNIA SERVICE CENTER Date: **MAY 11 2006**

IN RE: Petitioner:
Beneficiary:



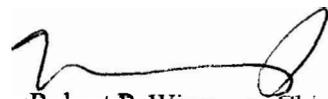
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the matter to the director for further action and entry of a new decision.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment 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 an internet service provider and software development company. The petitioner claims to be an affiliate of Abacus Trade, Limited, located in Sofia, Bulgaria. The beneficiary was previously granted L-1B status in order to serve as a software engineer in the United States, and the petitioner now seeks to extend his status for a two-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that the U.S. position offered to the beneficiary 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 petitioner submitted sufficient evidence to establish the beneficiary's eligibility as an intracompany transferee with specialized knowledge. Counsel observes that the beneficiary was previously granted L-1B classification based on essentially the same evidence and asserts that pursuant to an April 23, 2004 memorandum from William R. Yates, then Associate Director for Operations of the legacy Immigration and Naturalization Service, the director "should not deny or challenge a previously approved petition or application, especially in those cases where there are no material changes that would impact the extension petition." Counsel asserts that there have been no material changes and requests that deference be given to the prior approval of an L-1B classification nonimmigrant petition on the beneficiary's behalf.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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

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

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

In an August 4, 2004 letter, the petitioner described the beneficiary's position with the foreign entity and current duties with the United States entity as follows:

From February 2000 to December 2001, [the beneficiary] worked as a software programmer for [the foreign entity] in Sofia, Bulgaria. Since October 2001, he has been working for [the petitioner] in San Diego, California. His duties have included writing and testing software of a web based system for billing, provisioning and customer care for internet service providers. The system includes on-line subscription billing, bank reconciliation, customer support, e-mail to customers, on-line statement review, RADIUS interface, and automated provisioning on a variety of Unix/NT/Win2K based servers. The RODOPI program is 100 percent web enabled. In this position, [the beneficiary] has become very familiar with the following programming languages, environments and development tools: C/C++, Basic, Pascal, SQL, HTML, XML, Borland C++ Builder, and Java Script. [The beneficiary] has worked on the following RODOPI Software modules: Administration module, Maintenance module, User

interface module, RODOPI billing services, RODOPI Web Interface, and RODOPI database structure.

The petitioner further indicated that the beneficiary's duties in the United States are similar to those he performed in Bulgaria, explaining as follows:

He has been working with our product known as RODOPI software, writing and testing software updates and developing its Internet component to provide our American customers with the new technologies of Voice-Over Internet, Fax-Over Internet, and Unified Messaging. [The beneficiary] was able to work on some of the modules needed for this new technology, however, since Voice-Over IP is unavailable in Bulgaria, he was unable to participate fully in their development. Since the American company has reached a vital point in the application of these technologies, [the beneficiary] has been essential to our American team in the development of a final version and its testing.

Finally, the petitioner provided the following explanation with respect to the purpose for the beneficiary's transfer to the United States:

The vast majority of our software clientele are American companies, and approximately ten percent of the Internet providers in the U.S. use our product. We work with the world's leading computer industry companies at this time, especially regarding our RODOPI software, and it is essential that we be able to have immediate access to new developments as we work in a field which is so cutting edge that new developments become obsolete almost as soon as they are developed and announced.

There is a substantial difference between the high tech infrastructure in Bulgaria as compared to the United States, this difference is particularly acute in the Internet technology area. Because so many of our customers are U.S. Internet provider companies, we found it essential that our employees understand the reality of the conditions under which our clients work. This has become all the more important now with the emerging new technologies in the United States, such as Voice-Over Internet, Fax-Over Internet and Unified Messaging, all of which are virtually unknown in Bulgaria.

[The beneficiary] has developed his knowledge of these new technologies and has learned to apply and integrate them into the RODOPI software we develop. He is heavily involved in the project to bring RODOPI up to date through the Voice-Over Internet, Fax-Over Internet and Unified Messaging. He is well versed in all the programming languages used in our software. . . . Therefore, [the beneficiary's] position is unique in that he has an understanding and a familiarity with our software, at the same time having the ability to work with the new technologies that have been developed here in the U.S. To remain an industry leader in the provisional billing software area we must continually update our products. [The beneficiary] is needed for us to continue to provide the best and most efficient provisional billing software products on the market. His skills and knowledge are under-utilized in our Bulgarian

company. It would take months to train an individual, already familiar with the new technologies, in the design and operation of our RODOPI software. With [the beneficiary] we have a person who has the required specialized knowledge who is also prepared to begin work now, when it is most crucial to both our company and our clients that we apply the U.S. technology to our software with which he is thoroughly familiar.

The petitioner submitted a copy of the beneficiary's resume, which confirms his experience in the development of RODOPI software for the petitioner and the foreign entity.

The director denied the petition on August 21, 2004, concluding that the petitioner did not establish: (1) that the beneficiary possesses specialized knowledge; or (2) that the beneficiary has been and would be employed in a capacity that requires specialized knowledge. The director observed that the petitioner had not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field, and noted that simply relying on the beneficiary's familiarity with the parent company, his talent, and his potential to contribute to the petitioner's growth is not sufficient to establish that he possesses specialized knowledge or has been and will be employed in a capacity involving specialized knowledge. The director further determined that the petitioner had not established that the beneficiary's knowledge of the company's products, processes or procedures is substantially different from, or advanced in relation to, other skilled workers in the beneficiary's field.

On appeal, counsel for the petitioner provides a detailed overview of the history of the U.S. company and its Bulgarian parent, and emphasizes the difference between the "high tech infrastructure" in Bulgaria as compared to the United States. Counsel explains the need for the beneficiary's transfer as follows:

Because so many of Company's customers are U.S. Internet provider companies the Company found it essential that its employees understand the reality of the conditions under which the Company's clients work. This has become all the more important now with the emerging new technologies in the United States, such as Voice Over-IP, Wireless Broadband, and Content Delivery, all of which are virtually unknown in Bulgaria.

[The beneficiary] has developed his expert level knowledge of these new technologies and has learned to apply and integrate them into the RODOPI software the Company develops. He has been heavily involved in the project to bring RODOPI up to date through the use of Voice Over-IP, Wireless Broadband, and Content Delivery. He is well versed in all the programming languages used in the Company's software However, [the beneficiary's] position is unique in that he has a developer's understanding and familiarity with the Company's software, and the suite of interdependent programmed modules that comprise it, while at the same time having the ability to work with the new technologies that have been developed here in the U.S. . . . With [the beneficiary], the Company has a person who has the required specialized knowledge, when it is most crucial to both the Company and its clients that the Company applies the U.S. technology to its software with which he is thoroughly familiar.

In the United States, [the beneficiary] has been charged with duties that augment those he discharged for the Company in Bulgaria. . . . He has been working with the Company's product known as RODOPI software, writing, developing, and testing software updates and developing its Internet component to provide the Company's American customers with the new technologies. . . . Through eight years of development, RODOPI has emerged as a completely integrated product that, through a complex suite of computer programs, serves the Company's clients' automated billing, provisioning, and customer care software needs. The Company's competitive advantage is that we are the only integrated service provider in the global market. The Company's core development is performed in the United States, and discrete pieces of development work are performed in Bulgaria at Abacus Trade. It is critical that the Company's core developers assist us in the United States. . . .

[The beneficiary] is extraordinarily adept at developing the Requirements Definition, directing the design of the comprehensive modification, and utilizing the Company's proprietary Software Development Kits When the Company needs a new feature for a customer, the Company tasks [the beneficiary] with modifying the internal algorithms to incorporate that function. . . . [The beneficiary] is one of a very few individuals in the world that can quickly reengineer the core product components without disrupting the functioning of the product. . . . [The beneficiary] has performed much of the customization for specific important clients that are designated as "high risk."

With respect to the beneficiary's claimed qualifying employment with the foreign entity, counsel explains as follows:

[The beneficiary] was able to work on some of the modules needed for this new technology. However, since Voice-Over IP is unavailable in Bulgaria he was unable to participate fully in the product's development. Since the American Company has reached a vital point in the application of these technologies, [the beneficiary] has been essential to the Company's American team in the development, testing, implementation, and deployment of the product. He could not perform his function at the same level of effectiveness if he was working at the foreign company, as he would not be close to the client-base or the Company's other core developers.

[He] possesses specialized knowledge of the RODOPI software, as it is applied in various international markets, because he has worked on projects adapting the product to a plethora of systems used by the Company's clients in more than 50 countries. Moreover, he has advanced knowledge, as compared to his colleagues, of how this product is used and can be applied in various technology environments, as he has implemented customization plans for various clients globally.

His knowledge is not readily available in the U.S. job marketplace, for while individual software engineers may have a body of skills related to the various programming languages, they do not know the Company's software and how best to modify and customize it. His knowledge base is far deeper than a general understanding of how to code modifications. Instead, he has comprehensive, essential knowledge of the Company's product, and this specialized knowledge is needed for development of modules that customize the Company's proprietary software.

Referring to an April 23, 2004 CIS interoffice memorandum from William R. Yates, Associate Director for Operations, Counsel further notes that since there was no substantial change in circumstances, the director was required to make a determination of material error with regard to the prior approved petition or acknowledge receipt of new material information that adversely impacts the petitioner's or beneficiary's eligibility. Counsel claims that the director was otherwise required by current CIS policy to give deference to the subjective determination of prior adjudicators who concluded that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity. *See* Memorandum of William R. Yates, Associate Director for Operations, USCIS, to Service Center Directors, et al, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity* HQOPRD 72/11.3 (April 23, 2004) ("Yates memo").

Upon review, the director's decision will be withdrawn and the matter remanded for further consideration and entry of a new decision.

Although the petition will be remanded, the AAO acknowledges counsels claim that the director was required by current CIS policy to give deference to the determination of a prior adjudicator who concluded that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity, pursuant to the April 23, 2004 Yates memo. Counsel's assertion is not persuasive. It must be emphasized that that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

While CIS approved a petition that had been previously filed on behalf of the beneficiary, the prior approval does not preclude CIS from denying an extension of the original visa based on reassessment of beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. As discussed above, the record as presently constituted fails to establish that the beneficiary possesses knowledge or that the U.S. position requires knowledge that meets the regulatory and statutory definitions of "specialized knowledge."

The regulation at 8 C.F.R. § 103.2(b)(8) states:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence [I]n other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence

The director examined the petitioner's evidence and determined that the petitioner had not submitted sufficient evidence to establish whether the beneficiary was employed abroad in a position which involved specialized knowledge, or to establish that the position offered in the United States requires a person with specialized knowledge specific to the petitioner's products or processes.

However, the record as presently constituted does not contain any evidence of clear ineligibility that would justify the director's decision to deny the petition without first requesting additional evidence or issuing a notice of intent to deny the petition. *See* 8 C.F.R. § 103.2(b)(8); *see also* Memo. of William R. Yates, Associate Director, Operations, USCIS, to Regional Directors, et al, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)*, HQOPRD 70/2 (February 16, 2005).

Accordingly, as the evidence of record does not directly reflect that the petitioner or beneficiary is ineligible, the director should not have denied the petition based on a lack of evidence without first requesting additional explanation and documentation. *See* 8 C.F.R. § 103.2(b)(8); 8 C.F.R. § 214.2(l)(14)(i). The AAO agrees that the evidence of record raises underlying questions regarding eligibility. In such an instance, the director "shall request the missing initial evidence, and may request additional evidence" 8 C.F.R. § 103.2(b)(8).

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.*

When analyzing whether a beneficiary's knowledge rises to the level of specialized, it is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, when

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. As will be discussed, other than deleting the former requirement that specialized knowledge had to be "proprietary," the Immigration Act of 1990 did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of 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.

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 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.

It should also 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 “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.

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.”)

In this matter, the petitioner has not adequately explained or documented the beneficiary’s claimed specialized knowledge. The petitioner has provided only a brief and vague description of the beneficiary’s 22 months of employment with the foreign entity that fails to establish what exactly is the beneficiary’s

specialized knowledge or how he gained it. While the AAO is satisfied that the beneficiary been involved in the petitioner's RODOPI software projects both in the United States and in Bulgaria, his exact role within these projects and the extent of his contribution to the development of the software have not been clarified. On appeal, counsel emphasizes that the beneficiary "has advanced knowledge, as compared to his colleagues, of how this is used and can be applied in various technology environments" and claims that he has worked on product implementations in 50 countries. These statements are not supported by documentary evidence. 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)).

To cure these deficiencies, the petitioner should provide a comprehensive description of all positions held by the beneficiary since joining the foreign entity, including all job duties performed, the specific knowledge and skills applied in each position, and the foreign entity's requirements for each position. The petitioner should also describe all projects to which the beneficiary has been assigned and any special or advanced assignments that would help to establish that the beneficiary should be considered "key personnel," as discussed above. Further, the AAO notes that the petitioner repeatedly stated that the beneficiary was not able to fully participate in the RODOPI development efforts while employed by the foreign entity due to the scarcity of certain technologies in Bulgaria, and has also stated that its "core development team" is located in the United States. If this is the case, the record suggests that the beneficiary was primarily transferred to the United States to gain experience in internet technologies, rather than to apply any existing special knowledge of the petitioner's product or any advanced knowledge of the petitioner's processes. The petitioner must establish that the beneficiary's position with the foreign entity involved specialized knowledge. Given that the claimed specialized knowledge is dependent on the beneficiary's ability to customize the petitioner's product to work with the latest internet technologies, the record suggests that he did not obtain such knowledge until subsequent to his transfer to the United States entity.

The petitioner has also failed to distinguish its software from similar software offered by competitors, an important distinction, since the software itself appears to be based on common web-enabled database technologies. The petitioner should submit additional documentation regarding its RODOPI software and explain how it differs from similar products developed by its competitors. Without additional explanation, the petitioner has not established that the knowledge required to customize and implement this software would require the services of an employee with specialized knowledge specific to the petitioning organization, rather than those of an experienced software programmer with a background in internet and database technologies. The petitioner should explain how its technologies or processes differ from those used by other companies in its industry, and why knowledge needed to perform the duties of the U.S. position could not be easily transferred to an experienced programmer with similar experience in the software industry.

If the beneficiary has undertaken specialized training with the foreign entity, the petitioner should identify the type and length of training, the purpose of such training, and evidence, such as course completion certificates or other records, to establish that the beneficiary actually completed the training. The petitioner should also describe the training program typically completed by similarly employed workers in the foreign organization. If all employees receive exactly the same training, mere completion of the training program is insufficient to establish that the beneficiary's knowledge is advanced.

The record contains no information regarding other similarly employed workers employed by the foreign and U.S. entities which would allow CIS to make comparisons between the beneficiary and the remainder of the petitioner's and foreign entity's workforce. The petitioner should identify the total number of workers employed at the location where the beneficiary worked, the number of workers employed in the same or similar roles, and provide an organizational chart for the foreign entity that depicts the beneficiary's previous position. As noted above, the petitioner has stated that the beneficiary's knowledge is more advanced than that of his colleagues, but did not provide documentary evidence to support this statement. The petitioner should also further describe the staffing of the United States entity and provide an organizational chart. If the petitioner employs other workers in the position to be filled by the beneficiary or similar positions, it should describe how the beneficiary's duties will differ from those of the other employees, and describe the educational and professional background of any similarly employed worker. Again, given that the petitioner has stated that the "core development" of the RODOPI product is performed in the United States, it is unclear based on the current record how the beneficiary was selected from the foreign entity based on his specialized or advanced knowledge of this product.

The lack of evidence in the record as presently constituted makes it impossible to classify the beneficiary's knowledge of the petitioner's technology and processes as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. Although the 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. As the petitioner did not have sufficient notice of the deficiencies in its evidence, the petition will be remanded, and the petitioner shall be given the opportunity to submit additional evidence in order to establish the beneficiary's specialized knowledge qualifications.

Another issue not addressed by the director is whether the petitioner established the claimed affiliate relationship between the petitioner and the foreign entity. The petitioner claims that an individual, Lilian Vachovsky, owns 99.7 percent of the foreign entity and 52 percent of the U.S. entity. With respect to the ownership of the U.S. entity, the petitioner has submitted its stock certificates number 7 issuing 2,400,000 shares to Ivan Vachovsky and stock certificate number 8 issuing 2,600,000 shares to Lilian Vachovsky. Both certificates were dated June 7, 2000 and indicate on their face that the company is authorized to issue 100,000 shares. The petitioner did not provide copies of stock certificates numbers one through six, or its stock transfer ledger. The petitioner provided a translated document dated December 28, 2002, identifying the Lilian Vachovsky as the majority owner of the foreign entity. However, the petitioner has also provided its audited financial statements for the six-month period ended on June 30, 2003, which includes the following information on page 13 as "Note K – Related Party Transaction": "[The petitioner] owns [sic] Abacus Trade, LTD., a Bulgarian company, \$113,889. *There is no affiliation between the two companies*, but Abacus Trade, LTD. is *partially owned* by Lilian Vachovsky. This note is unsecured but payable on demand." (Emphasis added.) This statement suggests that there has been a change in ownership in the foreign entity, such that it is no longer majority owned by Ms. Vachovsky. Based on these inconsistencies, the petitioner should be instructed to submit definitive evidence of the ownership and control of the foreign and U.S. entities as of the date this petition was filed.

In this matter, the evidence of record raises underlying questions regarding eligibility. Further evidence is required in order to establish that the petitioner and beneficiary meet the requirements for L-1B classification. The director is instructed to issue a request for evidence addressing the issues discussed above, and any other evidence he deems necessary.

ORDER: The decision of the director dated August 21, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.