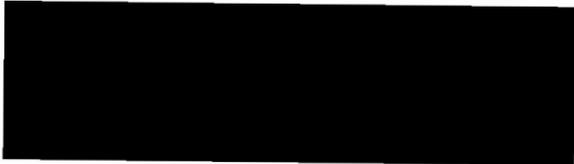


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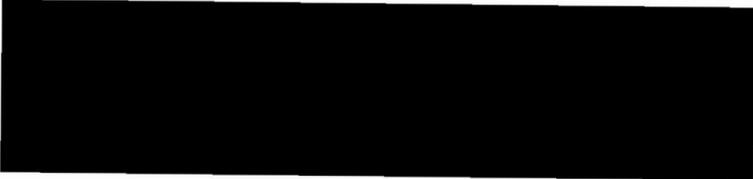
D7

File: SRC 05 116 50396 Office: TEXAS SERVICE CENTER Date: 17 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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of programmer and Java specialist 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 Florida corporation, is a provider of property and casualty insurance. The petitioner claims to be an affiliate of the beneficiary's foreign employer, [REDACTED] located in Bogota, Colombia. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary is a specialized knowledge employee, and that CIS misapplied current standards set forth in section 101(a)(15)(L) of the Act and agency memoranda. Counsel for the petitioner explains that the U.S. entity is a new office and the "personnel hired there must be of the greatest caliber and expertise in order to offset losses that are inherently related to the costs of starting a business." Counsel for the petitioner further asserts an "external" programmer would not have the expertise that arises from countless hours of training with [the petitioner's] proprietary software." Counsel concludes that the petitioner has established that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures and therefore qualifies for the benefit sought. Counsel submits a brief in support of the appeal.

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

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

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

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

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:

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 letter dated March 1, 2005, submitted with the petition, the petitioner stated "as programmer and Java programmer specialist, [the beneficiary] has been important in the develop [sic] and deployment of TronWeb in [the foreign entity] and he will be responsible for the deployment at The Company of the TronWeb Systems, central software for the internal and external process in [the petitioner]."

In addition, the petitioner provided the following list of duties for the beneficiary's proposed position as a programmer specialist and Java developer:

Plan, develop, test and control the activities regarding TronWeb applications and JAVATron components. (TronWeb and JAVATron are components of Tronador Systems); develop, test and document the implementation and deployment of the Web's applications, in order to increase the efficiency of The Company's external transaction using Internet; develop, test and document the implementation and deployment of the TronWeb Systems, applying knowledge of programming techniques and computer systems in accordance with The Company's needs, standards, and procedures; evaluate user request for new or modified programs; consult with user to identify current operating procedures, and clarify program objectives; read manuals, periodicals, and technical reports to learn ways to develop

programs that meet The Company's requirements; formulate plan outlining steps required to develop TronWeb Systems, using structured analysis and design; prepare flowcharts and diagrams to illustrate sequence of steps program must follow and to describe logical operations involved; design computer terminal screen displays to accomplish goals of the operations of the business; convert project specifications, using flowcharts and diagrams into sequences of detailed instructions and logical steps for coding into language that can be processed by the computer, applying knowledge of computer programming techniques and computer languages; enter program codes into computer system and commands to run and test program; read computer printouts or observe display screen to detect syntax or logic errors during program test, or use diagnostic software to detect errors; replace, delete or modify codes to correct errors; analyze, review, and alter program to increase operating efficiency or adapt to new requirements in conformity with the goals established by MAPFRE corporate standards and procedures; write documentation to describe program development, logic, coding, and corrections; write manual for users to describe installation and operating; assist users to solve operating problems; recreate steps taken by user to locate source of problem and rewrite program to correct errors; use computer-aided software tools, such as flowchart design and code generation in each stage of system development; train other employees to use computer programs; install and test program at user site; provide technical assistance to program users; monitor performance of program after implementation; develop TronWeb Systems program for business of technical applications, in order to increase the efficiency of The Company's operations consonant with the guidelines and procedures of [the parent company].

The petitioner submitted an organizational chart for the U.S. company. The chart indicates that the chief executive officer supervises the head of the information technology division who then supervises two TronWeb Specialists and the beneficiary's position as Java Specialist.

The petitioner described the beneficiary's duties with the foreign company as a JAVA Expert to include: "plan, implement and control all of the activities related to the application of TronWeb and the components of JAVATron Guarantee correct upgrade of the platform and applications." The position requires a minimum of "one year experience in the development of information and program solution in computers utilizing the basic technical resolution." In addition, the position prefers knowledge and experience in "ORACLE and development of ORACLE and JAVA with UNIX and Windows, Visual Tool in a Window environment."

On March 25, 2005, the director issued a notice requesting additional evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director also requested evidence to establish that the beneficiary's knowledge of the processes and procedures of the petitioner is apart from the elementary or basic knowledge possessed by others.

Specifically, the director requested: (1) evidence relating to the unique methodologies, tools, programs, and/or applications that the petitioning company uses, including a detail explanation of how these are different from the methodologies, tools, programs and/or application used by other companies; (2) a detailed explanation of the equipment, system, product, technique, or service of which the beneficiary has specialized

knowledge, and indicate if it is used or produced by other employers in the United States and abroad; (3) explanation as to whether the beneficiary is currently working on a specific project abroad and if he will be working on the same project in the U.S., including supporting documentation, if applicable; (4) a record from the human resources department detailing the manner in which the beneficiary has gained his specialized knowledge; (5) a statement indicating the minimum amount of time required to train an employee to fill the position offered to the beneficiary and specifying how many employees fill this position and if they received the required training; (6) an explanation as to whether the petitioner is seeking to bring the beneficiary to the U.S. to provide training in the area of his claimed specialized knowledge and a detailed statement of the training the beneficiary will provide other employees; (7) a detailed statement as to whether the beneficiary will receive training in the US. and an explanation of that training; (8) an explanation of why a U.S. worker cannot perform the job offered to the beneficiary; and (9) information as to whether the petitioner has filed any other petitions for L-1B classification within the past 12 months, including each beneficiary's name, position description and title.

In response, counsel for the petitioner submitted a letter, dated April 6, 2005, responding to the director's request. In response to the director's request for evidence establishing that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field and that this knowledge is apart from the basic knowledge possessed by others, counsel for the petitioner asserted the following:

- a) The position of Programmer and Java Specialist must be performed by a holder of at least a baccalaureate degree in Computer Systems and must be occupied by someone that understands and has the expertise in the intricate software created by and utilized by the parent company
- b) The beneficiary has been employed in [the foreign entity] for the past 10 years. During this lengthy period of time, he has acquired the knowledge and experience necessary to occupy this position. Further, during this time, he has participated in projects where his knowledge of the standard, methodologies and tools used by the parent company . . . were essential.

In support of the above-mentioned assertions, the petitioner submitted a letter from the foreign entity, dated April 28, 2005, detailing the primary functions that the beneficiary must carry out daily within the information technology management office in the company abroad. The duties are the following:

Functions:

- Analyze the modification-requirement definitions to the TRONWEB applications server.
- Carry out modifications to the TRONWEB applications server, making sure that the changes are made to all the servers (Development, Production, Historical and Branch Zero).
- Maintain constant monitoring over the performance of the applications servers, taking the necessary corrective measures in order to guarantee good response times.
- Apply the upgrades on the TRONWEB applications server, making sure that these updates are applied in a correct fashion across the different servers (Development, Production, Historical and Branch Zero).

- Maintain control of the TRONWEB applications server, making sure that they are at their latest update, avoiding downtime because of malfunctioning updates.
- Keep the applications server and the database updated in accord with the CIMS that MapfreSoft sends periodically, following a procedure that guarantees the correct functioning of the systems at different stages, development, testing and production.
- Keep updated the documentation on the creation and changes to the TRONWEB applications server.
- Develop routines that ease the TRONWEB applications servers and their updates.
- Provide support to the Applications Direction Office in the implementation of new solutions of software applications related to the Java platform.
- Execute and complete work plans and schedules.
- Support the Applications Direction Office in the creation of administration procedures for the TRONWEB applications server and the application methodology and update control.
- Comply with the application of the administration and update methodology of the TRONWEB applications server.
- Inform the Applications Direction Office and Information Technology Management regarding any setbacks that have occurred or the need for resources that may adversely affect the availability of the TRONWEB applications servers.
- Make improvements to the work methodology, standards and procedures.
- Provide support to the Direction Office of Technology and Applications, maintaining a high level of coordination and teamwork among the different direction offices.
- Guard the TRONWEB applications server, guaranteeing its availability according the operational needs of the company.
- Provide support in everything related to the TRONWEB applications server.
- Attend the periodic meetings set by the Applications Director.

In response to the director's request for evidence relating to the unique methodologies, tools, programs and/or applications that the company uses and how they are different from the methodologies, tools and programs used by other companies, counsel for the petitioner states, "Tronador is a central information system designed and developed by [the foreign entity], following the corporate policies defined by the parent company." The petitioner submitted a training manual of Tronador, a letter from the petitioner describing the Tronador system, and a program license.

In a letter dated May 5, 2005, the petitioner describes the Tronador system as the following:

Developed by a team of computer specialists of [the parent company] in Spain, this software is sent to each company around the world, where personnel specializing in every country takes charge personalizing it, adapting it to political own, legislation and local market, without losing its scheme that demands our headquarters.

Technically developed with latest computer technology, Tronador is executed on operating system UNIX (HP-UX o AIX) with a database ORACLE; his interface user (screens) has a Web approach, across our components JAVA and the required software of development are PL/SQL Developer from Oracle.

It is a computer integral system that supports the management of the different area of an insurer. (Persons' administration or third parties, issuance, claims, reinsurance, cashing, accounts for paying, commissions and accounting).

For his great number of options and diversity of functionality, Tronador requires in his implantation both; a computer specializing team and a group of functional analysts.

In addition, the petitioner submitted the following evidence in response of the director's request: a letter from the foreign entity detailing the specific projects in which the beneficiary has participated; a detailed list of the training taken by the beneficiary that qualifies him for the position of Java Specialist; certificates for courses and seminars taken by the beneficiary; a letter from the human resources department of the foreign company confirming that the beneficiary has been employed with the company since August 17, 1993; copies of diplomas awarded to the beneficiary; and documentation regarding three L-1B petitions filed by the petitioner.

On May 27, 2005, the director denied the petition concluding that the petitioner did not establish that the position of programmer and Java specialist requires someone with specialized knowledge, or that the beneficiary has such knowledge. The director noted that the beneficiary's duties do not appear to be significantly different from those of any other computer programmers employed by the petitioner, or different from the duties performed by other programmers in the computer industry. The director also noted that the petitioner did not demonstrate that the petitioner's processes and procedures are significantly different from the methods generally used by other insurance companies. Finally, the director suggested that the beneficiary's knowledge is not noteworthy or uncommon, and the training received by the beneficiary is standard training given to all employees with computer experience within the company.

On appeal, counsel for the petitioner reiterates the job duties to be performed by the beneficiary in the United States, and asserts that the position requires specialized knowledge in order to successfully perform the duties required of the position. Counsel for the petitioner further states that TRONWEB is the "proprietary software developed by the [the petitioner's] family of corporations This software is the central hub of all business in [the petitioner]: through various modules, it permits the assessment of insurance and casualty claims, the prosecution of claims company-wide." In addition, counsel for the petitioner asserts that the U.S. entity is a new domestic enterprise and the personnel hired must be of "the greatest caliber and expertise in order to offset the losses that are inherently related to the costs of starting a business." Counsel for the petitioner further states that the beneficiary is more qualified for the position than any other programmer from a competing company. Counsel for the petitioner states that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in two legacy Immigration and Naturalization Service (INS) memoranda. See Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo").

Specifically, counsel asserts that the beneficiary meets the requirements set forth in the Puleo and Ohata memos in that he possesses (1) knowledge valuable for competitiveness; (2) unusual knowledge of foreign

operating conditions; (3) experience with significant assignments abroad that were beneficial to the employer; and (4) knowledge that can only be gained with the employer or which can not be easily transferred.

Counsel further emphasizes that according to the Ohata memorandum, the petitioner is not required to establish that the claimed specialized knowledge is narrowly held within the company. Finally, counsel asserts that the director's inquiry as to whether a U.S. worker could fill the offered position was inappropriate, as the Immigration Act of 1990 eliminated the prior requirement that the petitioner demonstrate that U.S. workers are not available to fill a specialized knowledge position.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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 job description of the services to be performed sufficient to establish specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated any basis to support this claim. The petitioner has provided a detailed description of the beneficiary's proposed responsibilities as a "programmer and Java specialist," however, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other Java programmers employed by the petitioner or the insurance industry at large. Going on record without 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)). Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner has repeatedly asserted that the beneficiary will "carry out modifications to the TRONWEB applications server," maintain constant monitoring over the performance of the applications server," and "apply the updates on the TRONWEB applications server," however, the petitioner does not establish that the beneficiary must possess knowledge of business processes, procedures and methods of operation that are specific to the company in order to modify, maintain and update the applications server. There is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that his level of knowledge is comparatively "advanced." The beneficiary's resume lists only specific projects in which he has participated in order to modify, maintain and update the server, but does not mention any experience in the development of internal policies or procedures. Again, simply going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In addition, contrary to the assertions of counsel and the petitioner, there is no evidence on record to suggest that the computer programming processes and Java technology pertaining to insurance companies are different from those applied for any computer programming position. In addition, the petitioner has not explained how the knowledge of the petitioner's TRONWEB computer system amounts to specialized

knowledge, particularly since the system is built upon Java, Oracle, Unix and PL/SQL technologies, all of which are commonly used by computer programmers and system administrators in the industry. While individual companies will develop a computer system tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. In the request for evidence, the director specifically requested that the petitioner identify the manner in which the beneficiary gained his specialized knowledge, including the total length of any classroom training or on-the-job training courses completed. In its response, the petitioner submitted a certification of participation from MAPFRE Insurance indicating that the beneficiary participated in the training program "Programming in Java for TRONWEB – Javatron" for a total of approximately 80 hours. This certificate appears to be the only training the beneficiary received with the TRONWEB application server while the remainder of his documented training was completed with external organizations and encompassed general subject matter such as Java, Oracle, and SQL technologies, to name a few. It is implausible that 80 hours of training with the TRONWEB application server is sufficient evidence to determine that the beneficiary has an advanced knowledge of the petitioner's application server. It is reasonable to believe that a computer systems professional with a background in Java and related technologies may learn the company's application server with minimum training.

Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired specialized knowledge as defined in the statute and regulations.

Furthermore, in the request for evidence, the director instructed the petitioner to submit evidence of how the beneficiary's knowledge differs from the knowledge held by similarly employed individuals within the company; evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality, or not generally known; evidence that the beneficiary possesses knowledge that is valuable to the employer's competitiveness; evidence that the beneficiary has been used abroad in significant assignments which have enhanced the employer's productivity, and evidence that the beneficiary is qualified to contribute to the United States employer's knowledge of foreign operating conditions.

In the petitioner's response, counsel for the petitioner indicates that the position to be filled by the beneficiary requires an individual who has a bachelor's degree in Computer Systems and "someone that understands and has the expertise in the intricate software created by and utilized by the parent company." Counsel for the petitioner further states that the beneficiary has 10 years of experience with the parent company and he has "acquired the knowledge and experience necessary to occupy this position." In addition, the petitioner submitted a letter from the parent company that details the specific projects in which the beneficiary has participated. The petitioner did not submit evidence to demonstrate that the beneficiary possesses knowledge that is valuable to the employer's competitiveness, or evidence that would allow CIS to compare the beneficiary's knowledge, training and experience to that of other similarly employed individuals within the company, as requested by the director. 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).

The AAO does not dispute the likelihood that the beneficiary is a programmer and Java specialist who understands Java technologies and is able to apply it within the context of the petitioner's specific environment. However, it is 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 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 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. at 15. 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,

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.* not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

based on the definition of “specialized knowledge” and the Congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

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

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

Further, although counsel correctly states that the L-1B visa classification does not require a test of the U.S. labor market for available workers, the Puleo memo cited by counsel allows CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” *See Puleo memo, supra.* A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge

therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

The record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other programmers and Java specialists. The petitioner has not established that the beneficiary has been trained in and has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have "advanced" knowledge of the company's business processes, procedures and methodologies, as well as "specialized knowledge" in the intricate software created by and utilized by the company. However, as the petitioner has failed to document any specific training other than the two-week course referenced above, or otherwise describe or document the purported knowledge, these claims are not persuasive.

Furthermore, the petitioner failed to provide the requested information regarding the training acquired by similarly employed workers with the company, and the job titles and duties of other workers for whom the petitioner has filed L-1B petitions. Again, 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 this information, the AAO has no basis to compare the beneficiary's knowledge to that of other workers within the company, and therefore it can not be concluded that his knowledge is "advanced." There is no indication that the beneficiary has any knowledge that exceeds that of any experienced programmer specializing in Java development, or that he has received special training in the company's methodologies or processes which would separate him from any other similarly employer worker with the foreign company. However, notwithstanding the lack of documentation, the petitioner failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

The AAO does not dispute that the petitioner's organization, like any insurance company, has its own internal information systems processes and methodologies. However, there is no evidence in the record to establish that the beneficiary's knowledge of these systems, processes, and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the claimed "advanced knowledge." The petitioner has simply submitted no documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures and methodologies would differentiate him from any other similarly employed Java specialist within the petitioner's group or within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel's reliance on the Puleo and Ohata memoranda is misplaced. It is noted that the memoranda were intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memoranda is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. While the factors discussed in the memorandum may be considered, the regulations specifically require that the beneficiary possess an "advanced level of

knowledge” of the organization’s processes and procedures, or a “special knowledge” of the petitioner’s product, service, research, equipment, techniques or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As discussed above, the petitioner has not established that the beneficiary’s knowledge rises to the level of specialized knowledge contemplated by the regulations.

In sum, the beneficiary’s duties and technical skills, while impressive, demonstrate knowledge that is common among computer systems professional working in the beneficiary’s specialty in the information technology field. The petitioner has failed to demonstrate that the beneficiary’s training, work experience, or knowledge of the company’s processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large insurance companies. The AAO does not dispute the fact that the beneficiary’s knowledge has allowed him to successfully perform his job duties for the foreign entity. However, the successful completion of one’s job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a “key personnel,” nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary’s knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary’s field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

The legislative history of 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*. Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

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.