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File: WAC 05 056 53986 Office: CALIFORNIA SERVICE CENTER Date: **SEP 05 2006**

IN RE: Petitioner:  
Beneficiary:



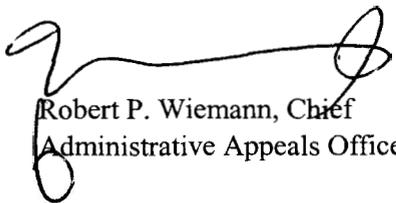
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 California limited liability company, is a provider of information technology consulting services. It claims to be the parent company of [REDACTED] located in Kerala, India. The petitioner seeks to employ the beneficiary as a software engineer for a three-year period.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge of the petitioner's processes and its individual clients, and that the position could not be filled by a software engineer who did not have such knowledge without several months of training. Counsel further states that the beneficiary will be performing "the most critical function" of the company by providing software engineering services to its clients. Counsel emphasizes that the beneficiary will be working on the same client project on which she worked abroad and possesses knowledge that is key to the successful implementation of the U.S. project. 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(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

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

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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

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

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

The nonimmigrant petition was filed on December 21, 2004. In a December 16, 2004 letter, the petitioner indicated that the beneficiary had been employed by the foreign entity as a software engineer since June 2, 2003 and would be transferred to the petitioner to serve in a similar position. In an attached statement, the petitioner described the beneficiary's current position as follows:

[The beneficiary] is responsible for the execution of software projects from conceptualization to implementation. The responsibilities include overall project management, requirements management, architectural design, coding, testing, rollout, implementation support and change management. . . . [The beneficiary's] responsibilities as a Software Engineer include:

- Interaction with the customer/on-site team for requirements gathering, effort estimation and SoW (Statement of Work) generation.
- Doing a feasibility study of the project, with regard to whether the company has adequate expertise and resources to take up the project. Gaps and risks are identified and necessary action taken to mitigate the same.
- Managing Requirements, which involves the analysis of project requirements with a view to understanding the same and to identify the grey areas. Lack of clarity in requirements is often sorted out with discussions with the client/on-site team. . . .
- Issue Resolution, which includes managing the issues that come up during the course of the project and getting it resolved in time with the help of the client/on-site team.

- Ensuring that the team has the required technical expertise to execute the project. This involves the identification of key technical areas related to the project and conducting training sessions to plug any gaps. She along with other senior members in the team is also responsible for providing technical assistance over the course of the project.
- Ensuring that the project's quality standards constantly meet or better the company's benchmarks. . . .
- Ensuring that the organizational processes, based on CMMI Level 5 standards, are adhered to in her project. . . .
- Being part of organization development initiatives like training, recruitment and process improvement.
- Helping the business development team with technical solutions on potential projects. [The beneficiary's] extensive knowledge in various verticals coupled with her technical expertise has helped a lot in this regard.

Apart from these responsibilities, [the beneficiary] is also constantly involved in helping out other teams with technical and process related solutions Her extensive experience in the software industry helped a lot towards this. She has sound expertise in AS400 development using RPG/400, ILE RPG IV, CL/400, SQL/400, ILE CL and QLRPGLE. She has worked extensively with AS400 tools like TURNOVER, ALDON ANALYZER, SDA, RLU, DFU, QUERY/400, HAWKEYE, FFD, PDM, SEU, CRTTSTFIL etc.

[The beneficiary] also has wide experience like Retail. She has been lauded for the various solutions she has provided to the customer in terms of streamlining the client's business processes and improving profitability. . . .She has a proven record in Order Power projects and was involved in evolving a development strategy for similar projects.

The petitioner also provided a November 24, 2004 letter from the foreign entity, addressed to the beneficiary, confirming her proposed U.S. assignment and her proposed duties, which are essentially the same as those described above. The letter referenced the beneficiary's responsibility for the execution of software projects "from conceptualization to implementation," and providing ongoing support to process development, implementation and improvement. The petitioner also submitted a copy of the beneficiary's resume, which outlines in more detail her roles in various client projects since joining the foreign entity in June 2003. The petitioner provided evidence that the beneficiary has a bachelor's degree in electronics and communication engineering and is an IBM-certified AS400 RPGIV programmer.

Counsel noted in his December 20, 2004 cover letter that the U.S. company currently employs a total of 40 foreign nationals, including 12 L-1B visa holders as software engineers, programmers, analysts and project managers, as well as 28 H-1B workers who hold similar positions. With reference to the proposed position, counsel stated:

There is no other employee available to take on this position since the petitioner has obtained several new corporate clients and its present staff is inadequate to service these clients.

Beneficiary's experience with the foreign entity quite exclusively qualifies him [sic] to perform his [sic] duties in the United States. The petitioner is growing rapidly and does not have the personnel qualified to hire and train employees to meet this growth."

The petitioner must be able to transfer specialized employees who will work on projects in order to meet their clients needs. The petitioner risks losing such clients' business if it is not able to continue providing high quality computer services. There is no realistic alternative to immediately fill the needs of the petitioner.

The director issued a request for additional evidence on December 22, 2004. The director discussed the regulatory definition of "specialized knowledge" and CIS interpretations of the term as addressed in a 1994 legacy Immigration and Naturalization Service (INS) memorandum. The director instructed the petitioner to identify the number of persons holding the same or similar positions as the beneficiary at the U.S. location where the beneficiary will be employed. The director further requested that the petitioner explain how the duties the beneficiary performed abroad and those she will perform in the United States are different from those of other workers employed by the petitioner or other U.S. employers in the same type of position.

Counsel for the petitioner responded to the director's request on January 7, 2005, noting that the petitioner employs twenty-two software engineers at the location where the beneficiary will be employed. In response to the director's request for an explanation regarding any special or advanced duties, counsel stated:

The duties the alien performed abroad and the duties she will perform in the United States are identical and also very similar to the other software engineers in the company. The alien, therefore, is uniquely qualified to take on this position based on her experience with the affiliate company in India. That is, in her prior assignments she has experience working on the various projects that she will continue to work on in the United States. She was working closely with the United States office while she was employed in India in the same capacity. She is familiar with various client departments and has the ability to ascertain the critical issues and solve them with challenging deadlines based upon her experience.

Counsel concluded that the beneficiary is eligible for L-1B classification "based upon her 'professional/specialized knowledge' status," noting that she has a bachelor's degree, is an IBM certified specialist, and has "specialized experience as a software engineer with the petitioner's subsidiary." Finally, counsel noted that the petitioner had received "several L-1B approvals for other beneficiaries in similar positions."

The director denied the petition on January 18, 2005, 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 beneficiary's specialized knowledge "is founded upon a skill set in tools not proprietary or exclusive to [the petitioner]" but rather consists of software engineering tools "that appear to be standard throughout the industry and available to any software engineer." The director further determined that the beneficiary's current and proposed duties are commonly performed by systems

analysts and/or software engineers, and concluded that the beneficiary's knowledge "is actually quite common amongst her peers," and is based on proficiencies with common platforms and development tools.

The director acknowledged the beneficiary's claimed experience with various clients and experience with the foreign organization, but noted that mere familiarity with an organization's product or services does not constitute specialized knowledge under section 214(c)(2)(B) of the Act.

In an appeal filed on February 15, 2005, counsel for the petitioner emphasizes that a substantial portion of consulting services provided by the U.S. entity are performed by employees in India, making the petitioner dependent upon the ability to transfer employees between the two countries to service clients. Counsel asserts that all software engineers that have been transferred to the U.S. have substantial experience with the foreign entity working exclusively on software projects for specific U.S. clients, and are therefore in a unique position to continue servicing these clients in the United States without substantial interruption to the petitioner. Counsel submits an expanded job description for the beneficiary's software engineer position and asserts that it "substantiates the advanced level of knowledge of processes and procedures of the company as well as an advanced level of expertise and proprietary knowledge of the company's products/services, techniques which supersedes [sic] merely 'general knowledge' or expertise."

Counsel references a 1988 legacy Immigration and Naturalization Service (INS) memorandum to support his statement that the beneficiary's proposed role is characteristic of a specialized knowledge employee, noting that the beneficiary (1) possesses knowledge that is valuable to the petitioner's competitiveness in the marketplace; (2) is uniquely qualified to contribute to the petitioner's knowledge of Japanese market conditions and market matters; (3) has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employers' productivity, competitiveness, image or financial position; and (4) possesses knowledge that can only be gained through past experience with both the petitioner and the foreign entity. *See* Memorandum from Richard E. Norton, Associate Commissioner for Examinations, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge Under the L Classification*, (October 27, 1988)(Norton memorandum). Counsel states that the beneficiary's knowledge and experience in the foreign office "will allow the petitioner to maintain its competitive edge in the marketplace," as it would require several months to train a new employee.

Counsel, referencing *Matter of Penner*, 18 I&N Dec. 49, asserts that the beneficiary can be distinguished from a mere skilled worker because the beneficiary "shall be performing the most critical functions within the company utilizing her advanced level of education and knowledge within the petitioner's organization." Counsel emphasizes that the company's "entire product is providing software engineering services to its clients" and asserts that the beneficiary is therefore employed for her ability to carry out a "key process or function." Counsel objects to the director's conclusion that the beneficiary's knowledge is common among her peers and asserts that her eligibility "emanates from her knowledge and experience of the petitioner's individual clients and processes." Counsel asserts that the proposed duties cannot be filled by a software engineer who has no experience with the company's products or clients.

Counsel emphasizes that the position requires "a technically sound person with profound knowledge in AS400 system and . . . Order Power System," which is described as a "third party application running on AS400."

Counsel asserts that the beneficiary's job description includes "various software processes that are unique to the company and, therefore, the position requires experience with these processes in order to deliver the products to the clients." Counsel notes that the U.S. project will involve changes to the client's existing Order Power System to support a new website and the addition of extra features, and thus the client requires "an expert who knows the Order Power System well."

In support of the appeal, the petitioner submits a more detailed description of the client project to which the beneficiary would be assigned in the United States.

On review, the petitioner has not established that the beneficiary possesses "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), or that the intended position requires an employee with specialized knowledge.

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.*

In the instant matter, the petitioner submitted a detailed description of the beneficiary's employment in the foreign entity and her intended employment in the United States entity. However, the petitioner has not documented that the job duties to be performed require specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). As noted by the director, the beneficiary's job description does not distinguish her knowledge as more advanced or distinct among software engineers employed by the foreign or U.S. entities or by other unrelated companies. The majority of the beneficiary's duties relate to implementation of information technology solutions based on IBM's AS400 technology and the Order Power system, which is a third party application used in the retail industry. The petitioner is a consulting company and does not claim to develop its own software applications. Counsel asserts for the first time on appeal that the beneficiary also utilizes "various software processes that are unique to the company" including RPG/400, ILE RPG IV, CL/400, SQL/400, ILE CL, SQLRPGLE, Oracle, DB2 (Database tools), TURNOVER, ALDON ANALYZER, SDA, RLU, DRU, QUERY/400, HAWKEYE, FFD, PDM, SEU and CRTTSTFIL. The petitioner has not offered evidence that any of these technologies are specific to the petitioning company, and in fact, initially described much of the beneficiary's skill set as "AS400 tools." Further, Oracle, SQL and DB2 are common database technologies in the software industry and clearly not "unique" to the petitioning company. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Overall, the petitioner's initial job description did not establish that any of the beneficiary's claimed specialized knowledge relates specifically to the petitioner's organization, nor did it mention a specific project to which the beneficiary would be assigned in the proposed position, or otherwise explain how her particular

experience and knowledge would be applied in the United States. The technical environments in which the beneficiary has been and would be working are typical of AS/400 implementation projects in general, and to the retail industry specifically, and require technical knowledge and consulting skills that can easily be gained in the beneficiary's specialty. An experienced software engineering consultant at an information technology consulting company unrelated to the petitioner would be expected to possess similar expertise.

In response to the request for evidence regarding any special or advanced duties performed by the beneficiary, counsel explained that the beneficiary has experience working on "various projects that she will continue to work on in the United States," and is familiar with "various client departments." Counsel also noted that the beneficiary's duties are "very similar to the other software engineers in the company." Counsel and the petitioner declined to elaborate regarding the significance of these "various projects" or the "various client departments," instead asserting that the beneficiary is eligible for L-1B classification based on her bachelor's degree, her certification in IBM's AS/400 programming, and her "specialized experience" with the petitioner's subsidiary. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient to satisfy the petitioner's burden of proof. The petitioner's response to the director's request for evidence did not assist in establishing that the beneficiary possesses specialized knowledge of the petitioner's products, services or other interests, nor did it establish that the beneficiary possesses an advanced knowledge of the company's processes and procedures.

On appeal, counsel asserts for the first time that the beneficiary's knowledge is based on her knowledge of a specific client project to which she will be assigned in the United States, and provides a "more thorough" job description intended to establish the beneficiary's "advanced level of knowledge of processes and procedures of the company as well as an advanced level of experience and proprietary knowledge of the company's products/services."

The petitioner does provide a more detailed description of the project work to be undertaken, but fails to clarify how the project, which is based on AS/400 and Order Power technologies, requires specialized knowledge specific to the petitioner's organization. The petitioner has still not defined the beneficiary's claimed "proprietary" knowledge, nor defined the "processes and procedures" of which the beneficiary purportedly has "advanced knowledge." The petitioner claims that it would take several months to train another software engineer to perform these duties, but offers no evidence or explanation in support of this claim. The record is insufficient to support a finding that a software engineer with AS/400 and Order Power experience could not perform the proposed duties. While the petitioner's organization likely has developed processes and tools for the management of client projects, all information technology consulting firms must necessarily develop internal processes to manage similar client projects. Because the petitioner has not described or documented its "processes," it is impossible for the AAO to assess whether the petitioner's processes are particularly complex or different compared to those utilized by other companies in the industry, or whether it would realistically take a significant amount of time to train an experienced information technology consultant who had no experience with the petitioner's group of companies. 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.

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)).<sup>1</sup> 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 her to provide a specialized service, rather than an employee who has unusual duties, skills or knowledge beyond that of a skilled worker. Counsel asserts on appeal that the beneficiary carries out a "key process or function" because she provides software engineering services, "the most critical function within the company." If the AAO were to accept counsel's logic, any programmer, analyst or engineer working on client projects within petitioner's company, likely the majority of its workforce, would be considered to carry out a "key process or function."

Although counsel correctly observes that 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 all employees with any degree of knowledge of a company's processes or services. Counsel's implication that all employees providing technical consulting services for the petitioning organization should qualify for this classification is unpersuasive. Counsel's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker.

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

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F.Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "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.

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

Reviewing the Congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

The record does not distinguish the beneficiary's knowledge as different or more advanced than the knowledge possessed by other similarly employed software engineers supporting development and

implementation of the same types of products for similar companies in the petitioner's industry. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner* at 53. Likewise, the petitioner has submitted no evidence that would distinguish the beneficiary from any other software engineer employed within its international organization.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other software engineers is its assertion that the beneficiary has been assigned to a particular client project involving AS/400 and Order Power, and has a "long history" with the client. At the time the petition was filed, the beneficiary had been employed with the foreign entity for approximately 18 months, and the record shows that she was hired as a "trainee" software engineer, with at least a six-month probation period. The beneficiary's resume indicates that she has been assigned to the same client project for approximately 16 months. There is no evidence in the record that would set the beneficiary apart from the petitioner's or foreign entity's average software engineer, and counsel has in fact stated that all of the companies' software engineers perform similar duties. While familiarity with a particular client may be useful in the performance of the proposed job duties in the United States, it is not evident from the record that the beneficiary's 18 months of experience with the foreign entity at the time of filing should be equated to a "special" or "advanced" level of knowledge on the level of "key personnel." Familiarity with a particular client project alone is not sufficient to establish eligibility for this visa classification, particularly when the project itself appears to be based on industry-standard technologies. Again, the claimed specialized knowledge must be specific to the petitioner's group of companies. The petitioner has not identified anything unusual or unique regarding this particular project such that only employees with prior experience with the project would be capable of upgrading and maintaining the client's systems. Based on the evidence of record, the AAO cannot conclude that the beneficiary has acquired advanced knowledge of the petitioner's processes and procedures through her training and experience with the foreign entity.

Counsel's reliance on the Norton memorandum is misplaced. It is noted that the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or the regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum 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.

A subsequent INS memorandum pertaining to the interpretation of specialized knowledge, issued in 1994, emphasized the petitioner's evidentiary burden in these proceedings:

[T]he mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing *through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality* and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's

assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company *must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others*. It is the weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge.

(Emphasis added.) James A. Puleo, Acting Exec. Assoc. Comm., Office of Operations, Immigration and Naturalization Service, *Interpretation of Special Knowledge* (Mar. 9, 1994).

Upon review, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any documentary evidence that would allow the AAO to evaluate the claim. 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).

Counsel notes that CIS approved other L-1B nonimmigrant petitions that had been previously filed on behalf of other beneficiaries by the same petitioner for similar positions. 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.

If other nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions by the petitioner for similar positions, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

In sum, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among software engineers 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 used by the petitioner are substantially different from those used by other technology consulting companies. The AAO does not dispute the fact that the beneficiary's knowledge has allowed her to successfully perform her 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 her knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

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*, 745 F. Supp. at 16. The petitioner has not established that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

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

**ORDER:** The appeal is dismissed.