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U.S. Citizenship and Immigration Services

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[redacted]

File: WAC 04 058 51148 Office: CALIFORNIA SERVICE CENTER Date: SEP 05 2006

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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 dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to 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 is a corporation organized in the State of Delaware that operates a chain of fast food restaurants in California. The petitioner claims that it is the subsidiary of [redacted], located in the Philippines. The beneficiary has been employed in the United States in L-1B status by the petitioner's affiliate since April 2001. The petitioner filed the instant petition to request an amendment of the beneficiary's status pursuant to an upcoming merger between the petitioner and the beneficiary's current L-1B employer. The petitioner now seeks to employ the beneficiary as an operations manager and seeks to amend and extend the beneficiary's L-1B status.

The director denied the petition concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that the beneficiary has been and would be employed in a capacity that requires specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS) approved three previous petitions filed on behalf of the beneficiary for the same position and contends that the director erred in denying the instant petition absent a finding that there was a material error with regard to the previous approvals, a substantial change in circumstances, or new material information that adversely impacts the petitioner's or beneficiary's eligibility. Counsel relies on an April 23, 2004 CIS interoffice memorandum from William R. Yates, Associate Director for Operations in support of her assertion that the director was required to give deference to the prior approved petitions.

Counsel further asserts that the director considered "outdated and impermissible factors in defining specialized knowledge," and specifically questions the director's citation to *1756, Inc. v. Attorney General*, 745, F. Supp. 9 (D.D.C. 1990); *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982); and *Matter of Colley*, 18 I&N Dec. 117 (Comm. 1981). Counsel argues that the director failed to apply the proper regulatory criteria, and current interpretations of specialized knowledge as outlined in two legacy Immigration and Naturalization Service (INS, now Citizenship and Immigration Services (CIS)) policy memoranda issued in 1994 and 2002, respectively. Counsel further asserts that the director erred by making comparisons between the beneficiary's knowledge and that of other employees within the petitioner's organization and the petitioner's industry. Counsel contends that only an examination of knowledge possessed by the beneficiary is necessary under current standards. Counsel concludes that under current definitions and interpretations, the totality of the record establishes the beneficiary's eligibility for the benefit sought. Counsel submits a detailed brief and copies of the beneficiary's previous Form I-797 Approval Notices in support of the appeal.

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.
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> (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.
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> (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 beneficiary's employment abroad and proposed U.S. 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 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.

The nonimmigrant petition was filed on December 23, 2003. In a December 22, 2003 letter submitted in support of the petition, the petitioner indicated that the beneficiary would continue to serve as an operations manager, a position requiring "specialized knowledge of the products, presentation and service techniques that constitutes the trade secrets of the parent corporation." Specifically, the petitioner indicated that the beneficiary would perform the following duties:

(1) Direct, coordinate the manner food service is presented in accordance with the processes, procedures established worldwide by [the foreign entity] to enable the [the petitioner's] food chain to compete in the market;
(2) Educate the store crew team regarding the characteristic[s] of the company's unique product lines, equipment maintenance and processes;
(3) Coordinate, train and manage the activities of the store crew as well as prospective managers in [the petitioner's] products, service techniques;
(4) Direct, train U.S. employees of the corporation with established company policies, procedures and standards;
(5) Impart [the foreign entity's] operational procedures to the new store crew and prospective managers in the various food chain activities unique to the company's standards and policies.

The purpose of her important mission is to develop consistent service and product standards worldwide and to increase awareness of unique services and food products that have been uniquely developed by the mother company . . ..

* * *

With the ongoing expansion projects of the company in the U.S., the services of [the beneficiary] will be required by the company to oversee the operations of other new outlets and impart to its new employees the standards and service techniques which have been uniquely developed by the mother company, especially at this critical stage of reorganization and expansion. [The beneficiary] has had a key role in the setting up of the company's latest outlets.

In a letter dated December 22, 2003, counsel for the petitioner referenced these duties and stated:

The duties described above are different or unique from those performed by other workers of the petitioner. The [foreign entity's] fast food chain in [sic] expanding in the U.S. and the established characteristics of the company's unique business may be performed only by an individual with the "specialized knowledge" on [sic] the petitioner's business. The product and services of which the beneficiary has specialized knowledge may not be obtained from other U.S. employees considering the fact that this fast food chain is just starting its operations in the U.S. and that there are no available U.S. employees that are familiar with the unique product and trademark services of the [petitioner's] food chain.

The beneficiary's training is exclusive and significantly unique in comparison to any other person in the field as operations manager. The beneficiary has been trained with the [redacted] Food Services and has obtained the manner and trademark for selling the type of products and services that are exclusive only to [redacted] She has participated in the foreign company in various capacities and has been actually responsible in giving training, setting up systems for the [redacted] food chains in the Philippines. . . . the **knowledge obtained** by the beneficiary can be gained only through extensive prior experience with the [redacted]

The petitioner indicated that immediately prior to her transfer to the United States, the beneficiary held the position of "Assistant Store Manager I," for the foreign entity, where she performed the following duties:

(1) Achieves consistently high levels of product quality, safety, and availability by putting in place the quality management system for food and proper implementation of product control system;
(2) Achieves highest levels of cleanliness, orderliness and sanitation and waste management of all production and back areas by putting in place the quality management system for cleanliness;
(3) Ensures proper implementation of store building maintenance and equipment and facilities maintenance plan by putting in place the quality management system for condition;
(4) Responsible for overall achievement of food & paper, operating supplies, utilities, repairs and maintenance and novelty cost management. Ensures proper inventory management of resources in the same cost areas;
(5) Responsible for motivation and morale of production crew. Ensures that effective communication is in place to gain support for production related programs. Models the core values of the company the [redacted] way;
(6) Responsible for overall implementation of the store safety program;;
(7) Responsible for the accomplishment, recording and submission of all administrative reports related to her key result areas.

The petitioner stated that the beneficiary joined the foreign entity in 1993 and had since held the positions of shift manager, second assistant manager, and assistant store manager, and referenced her previous responsibility for conducing training courses for management-level staff. The petitioner further stated:

> [The beneficiary] has been strategically placed in the key position at the [foreign entity] to gain first hand knowledge essential to the successful promotion of [redacted] food products in the United States.
>
> This experience, through which [the beneficiary] developed this specialized knowledge of [the petitioner's] food chain's products and services, makes her a viable candidate for the position of Operations Manager for the new stores to be opened by [the petitioner]. Without the knowledge and skills of [the beneficiary], a person with general managerial expertise could not adequately fill the position in question.

The director found the information submitted insufficient to establish that the beneficiary has specialized knowledge or that she has been and will be employed in a specialized knowledge capacity. Accordingly, on May 4, 2004, the director requested the following additional documentation and information: (1) the total number of employees working at the location that employed the beneficiary and an organizational chart depicting the beneficiary's position in the staffing hierarchy; (2) the total number of employees working at the U.S. location that employs the beneficiary and an organizational chart showing the beneficiary's proposed position in the company's staffing hierarchy; (3) the number of foreign nationals employed at the U.S. location where the beneficiary will work, including their position titles and visa status; (4) the number of persons holding the same or similar positions at the U.S. location that will employ the beneficiary; (5) an

explanation regarding how the duties the beneficiary performed abroad and those she will perform in the United States are different or unique from those of other workers employed by the petitioner or other U.S. employers in this type of position; (6) a more detailed explanation regarding exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and whether it is used or produced by other employers in the United States and abroad; (7) an explanation as to how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in this particular field; (8) an explanation regarding the training to be provided by the beneficiary to other workers, if applicable; and (9) the impact on the petitioner's business if the petitioner is unable to obtain the beneficiary's services, and the alternative action to be taken to fill the proposed responsibilities.

In a response dated July 26, 2004, the petitioner stated that it employs 248 employees in the United States, including 21 at the restaurant that employs the beneficiary. The petitioner noted that it had filed a total of eight L-1B petitions for operations managers and that none would work at the same location as the beneficiary. The petitioner noted that, due to the nature of the duties, "it has always been necessary to transfer employees from the parent company" in order to fill its operations manager positions." In response to the director's request for a description of any special or advanced duties to be performed by the beneficiary, the petitioner provided essentially the same job description that was submitted with the initial petition.

The petitioner noted that its fast food restaurants sell products that are not sold anywhere in the United States and other products that are not unique in the industry, but still have a taste unique to the petitioner's organization. The petitioner stated that the manner and technique in which these products are prepared and served is also unique, and that the beneficiary's services are needed because of her specialized knowledge in the company's operational procedures. The petitioner further explained:

> In order for one to perform the above-enumerated duties, he or she must possess knowledge of the product's presentation, service techniques and operational procedures that constitutes trade secrets of [the petitioner's group]. The production methods, the quality services, the superior tasting food presentation and taste which result in superior quality products and high level of customer satisfaction are all aspects of the company that are unique to the [petitioner's] food chain and which constitutes the "Jollibee culture."
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> * * *
>
> It is therefore necessary to the success of the continuing expansion efforts of the petitioner to transfer to the United States a person with the unique knowledge of the Jollibee culture and which knowledge can be gained only from years of prior experience with the Jollibee food chain. This knowledge of what is termed as the Jollibee culture and its superior unique quality products and services cannot be duplicated in the general labor market and are proprietary to [the petitioner's organization]. It is knowledge that is unique to [the foreign entity's] employees who have been involved in key positions in the management, development, production, promotion, of the product and operation of the food chain that makes this knowledge specialized. The duties described above are different or unique from those performed by other workers currently employed or to be employed by the petitioner. The operational procedures, product, equipment and services of which the beneficiary of this

> petition has specialized knowledge may not be obtained from other U.S. employees as the operational procedures, service techniques and specifications of most of its equipment are patterned from the parent company.
>
> Since a substantial part of the beneficiary's work would involve the training and imparting of the . . . operational procedures and service techniques to newly hired US workers, it is essential that the person who will occupy the position of Operations Manager, possess the unique knowledge of the [redacted] culture, and which specialized knowledge can only be obtained through several years of work experience in the [foreign entity's] fast food chain operations. The operational procedures would include how the mother company will prepare, process, and serve its products to its customers. Other operational procedures would include the handling of supplies which have been imported from abroad and the maintenance of the Jollibee world class standard of service and efficiency.
>
> The beneficiary's training is exclusive and significantly unique in comparison to any other person in the field as operations manager. The beneficiary has been trained with the [foreign entity] and has obtained the manner and trademark for selling the type of products and services that are exclusively [sic] only to [the petitioner's group]. The beneficiary has worked with the petitioner's mother company in various capacities and more importantly she has been actually responsible in giving training, setting up systems for the [foreign entity] in the Philippines. The duties of the beneficiary could therefore not be handled by any U.S. worker who do [sic] not possess the specialized knowledge of the "[redacted] culture."

The petitioner further noted that it intended to open a total of 28 stores between 2004 and 2006, and stated that the beneficiary's services are needed to ensure that the company's "unique food standards and quality, and services, and operational procedures are followed in the latest stores to be opened by the petitioner." The petitioner submitted a letter from the foreign entity confirming that the beneficiary had completed a total of ten training courses with the foreign entity between 1993 and 1999. The petitioner also provided excerpts from several operations training manuals. The petitioner stated that the seminars and training undertaken by the beneficiary with the parent company are unique to the parent company and cannot be duplicated elsewhere. The petitioner indicated that in addition to the seminars attended by the beneficiary, she would also "regularly undergo specialized training regarding the operations and procedures of the mother company." The petitioner also submitted a July 23, 2004 letter from its research and development manager, who described the ethnic food items sold by the petitioner's restaurants in more detail. Regarding the beneficiary, the research and development manager stated:

> Before being transferred to the US Company, [the beneficiary] has undergone extensive training and seminars with our Training Development in conjunction with Research and Development regarding the food products we sell in our stores. Specifically [the beneficiary] was instructed regarding the components of these specialty food products, how they are prepared, the temperature settings required for the preparation and storage of each of these food products, and the recipes for some of these products that comprise part of the trade secrets of the company.

> Not all of our employees in the parent company have undergone such training. Only specialized personnel with the same level as [the beneficiary] are selected to participate in such trainings and have the privilege of gaining proprietary knowledge regarding some of the food recipes and preparation techniques. Such knowledge is essential in training future employees of the company.

The director denied the petition on August 18, 2004, determining that the petitioner had not established that the beneficiary possesses specialized knowledge, or that the beneficiary has been and would be employed in a capacity that requires specialized knowledge. The director cited the beneficiary's duties while employed by the foreign entity and concluded that she acted as a supervisor of non-professional employees performing tasks necessary to produce a common product, namely fast food. The director determined that the beneficiary was not employed in a qualifying capacity with the foreign entity. The director also cited the beneficiary's proposed duties and found that the submitted evidence did not explain or document how the beneficiary's job as an operations manager with the petitioner is different from any first-line supervisor job at any other international chain of fast food restaurants.

The director referenced the regulatory and statutory definitions of "specialized knowledge" and also discussed *Matter of Penner,* 18 I&N Dec. 49 (Comm. 1982), *Matter of Colley* 18 I&N Dec. 117 (Comm. 1981), and *1756, Inc. v. Attorney General,* F. Supp. 9, 15 (D.D.C. 1990) in his decision to emphasize the need for CIS to make comparisons between the beneficiary's claimed specialized knowledge and the knowledge of other similarly employed workers within the petitioner's group and within the industry.

On appeal, counsel asserts that the director erred in denying the petition in light of the three previous L-1B approvals granted to the beneficiary for the same U.S. position. Referring to an April 23, 2004 CIS interoffice memorandum from William R. Yates, Associate Director for Operations, counsel claims that the director was obligated to give deference to the prior decisions in which it was concluded that the beneficiary qualified for the benefit sought. Counsel further argues that, since the director departed from the previous decisions, the director was required to identify a material error with regard to the previous approvals, a substantial change in circumstances, or new material information that adversely impacts the petitioner's or beneficiary's eligibility. Counsel notes that the director's decision mentioned none of these factors, and further argues that a "material error" only applies to the misapplication of objective statutory or regulatory requirements. Counsel contends that the director was prohibited from questioning a previous subjective finding that the beneficiary possesses specialized knowledge.

Counsel further argues that the director erred in determining that the beneficiary's duties abroad and in the United States did not involve specialized knowledge. Specifically, counsel asserts that the director "considered outdated and impermissible factors in defining specialized knowledge," and erred by comparing the beneficiary's knowledge to that of both the general labor market and the remainder of the petitioner's work force. Counsel asserts that the director was required to rely on current statutory and regulatory definitions, as well as two legacy INS policy memoranda "clarifying the current position on the meaning of 'specialized knowledge.'" *See* Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994)("Puleo memo"); Memorandum from Fujie O. Ohata, Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, (Dec. 20, 2002)("Ohata memo").

Counsel contends that the cases cited by the director, including *Matter of Penner*, *Matter of Colley* and *1756, Inc. v. Attorney General*, and indirectly, the legislative history for the L-1 visa classification, do not provide a valid legal basis for the adverse decision. Specifically, counsel emphasizes that there is no current requirement that the beneficiary's knowledge be unique, proprietary or not commonly found in the U.S. labor market. Rather, counsel argues that the Puleo and Ohata memoranda only require an examination of the knowledge possessed by the beneficiary and a finding that the beneficiary possesses special knowledge of the company product and its application in international markets, or an advanced level of knowledge of the processes and procedures of the company.

Counsel contends that following current definitions and interpretations of what constitutes specialized knowledge, the petitioner has submitted sufficient evidence to establish that the beneficiary possesses the required "special and advanced level of knowledge" of the processes and procedures of the company. Counsel incorporates excerpts of previously submitted letters from the petitioner and foreign entity into her brief, and asserts that the beneficiary possesses knowledge of the company's products "that is significantly different from other stores in the industry."

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 the services of an employee with specialized knowledge.

As a preliminary matter, it must be noted that in making a determination as to whether knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that CIS is bound to base its decision entirely on the statutory and regulatory definitions and the above-referenced Puleo and Ohata memoranda, the memoranda were issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the original intentions of Congress in creating the specialized knowledge classification or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents. Counsel's specific objections to the director's reliance on *Matter of Penner*, *Matter of Colley,* and *1756, Inc. v. Attorney General* will be discussed in more detail below.

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 only a limited description of the beneficiary's duties and failed to document that the job duties to be performed require specialized knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D). As noted by the director, the duties cannot be distinguished from the duties performed by any supervisory employees working in any fast food restaurant. The described duties primarily involve training, overseeing and supervising kitchen, dining room, counter and utility "crew" and "prospective managers" and ensuring that they follow established procedures, policies, and standards for cooking fast food, handling sales transactions and customer service duties, cleaning the kitchen, dining area and restrooms, and other routine functions involved in operating a restaurant. In response to the director's request for a

description of any special or advanced duties to be performed by the beneficiary, the petitioner did not elaborate, but merely repeated the initial job description. 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).

Further, although the petitioner claimed that the beneficiary would provide training to managers and oversee training at new restaurants, this claim is not substantiated by evidence in the record and appears to be speculative in nature. At the time the petition was filed, the beneficiary was assigned to a specific restaurant with responsibility for overseeing the employees providing the day-to-day services at this location. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Accordingly, the claimed specialized knowledge is based solely on the beneficiary's knowledge of "unique" procedures utilized by the petitioner's group and the "Jollibee culture." The petitioner has not established that such knowledge is noteworthy or uncommon, such that it can be considered "specialized." Although requested by the director, the petitioner failed to explain how the training is different compared to that provided by similar companies operating fast food restaurants around the world. Compared to other operations managers employed in the fast food industry, the beneficiary is said to possess an unspecified amount of training that is not offered within any other restaurant chain. However, the petitioner has submitted no evidence to suggest that its procedures and methods, although "proprietary," are significantly different from those used by other large fast food chain restaurants. 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)).

Furthermore, many of the training courses completed by the beneficiary do not appear to be specific to the petitioner's organization, but rather provided general instruction in management technique. For example, the beneficiary's training seminars included "Targeted Selection," "Restaurant Analysis for Profit and Sales Strategy," "Dynamic Selling Seminar," "Systematic Managerial Analysis," "The Seven Habits of Highly Effective People," and "Crisis Management and Media Training." Based on the evidence of record, it is evident that a fast food manager who had worked for an unrelated restaurant chain could reasonably be expected to perform the beneficiary's duties with minimal additional training.

The petitioner claims that only an employee with several years of management experience with the foreign entity would be qualified to train U.S. staff in restaurant procedures and standards. The evidence in the record does not substantiate this claim. The submitted training manuals indicate that an employee with no previous experience with the organization can complete the training to become a "shift manager" in approximately three months. The foreign entity's web site indicates that its franchisees and their management teams complete a three-month training program that equips them with all the knowledge needed to independently manage their own restaurants. The record indicates that the petitioner intends to operate franchised restaurants in the United States. It is reasonable to conclude, and the petitioner has not shown otherwise, that the petitioner will not require U.S. franchisees to hire management personnel who possess years of experience with the petitioner's overseas operations. The submitted evidence does not illustrate that the proprietary operating methods or procedures of the petitioner are different or special compared to others in the

petitioner's industry, or that the length and type of training required for a management position in a Jollibee fast food restaurant exceeds normal requirements for this type of position.

The petitioner asserts that its products are not sold by any other food chain, but has not substantiated its claim that an employee with specialized knowledge is needed to train U.S. employees in the operational procedures needed to prepare and serve these products. While the petitioner's specific menu, which includes some traditional Filipino items in addition to hamburgers, chicken, and spaghetti, may be relatively new to the United States market, its operating procedures have not been shown to be any different from those used by the dozens of fast food chains which are prevalent in the United States. The petitioner has not established that the knowledge needed to train employees to prepare and sell a Filipino dish is significantly different from that required to train employees to prepare and sell more traditional "fast food" fare. Accordingly, the petitioner has not established that the beneficiary's knowledge is uncommon or noteworthy, such that it could be considered "special knowledge" as contemplated by the regulations. While the AAO can appreciate the petitioner's preference for experienced personnel to oversee its entry into the United States market, there is no evidence that special knowledge or experience of the foreign entity's products and services or advanced knowledge of the foreign entity's processes is actually required in order to perform the day-to-day oversight of restaurant operations for the petitioner's U.S. fast food stores.

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*, 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.

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[1] Counsel specifically asserted that the director erred by citing *Matter of Penner, Matter of Colley* and *1756, Inc. v. Attorney General* in his decision. However, 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 regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

Id. at 53. As noted by the director, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills, experience and general knowledge enable her to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. There is no indication that the beneficiary's background is specialized, in that it would enable her to perform a key process or function of the company.

Although counsel objects to the director's comparison of the beneficiary's knowledge to that of other employees within the petitioner's group and to similarly employed workers in the petitioner's industry, the AAO notes that the Puleo memorandum referenced previously 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." 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 not general knowledge held commonly throughout the industry but that it is truly specialized." *Id.* The analysis for specialized knowledge therefore requires an examination of the knowledge in context of the foreign and United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

In addition, contrary to counsel's assertions, 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*, 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.

Here, the petitioner has not submitted persuasive evidence that the beneficiary's knowledge is advanced compared to other similarly employed workers within the petitioner's group, nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other employees. Compared to other employees within the petitioner's corporate group, the beneficiary has likely received the same or similar training available to and completed by all supervisory and managerial employees working in the foreign organization's hundreds of restaurants. Although the petitioner provided a letter from its research and development manager stating that the beneficiary has undergone "extensive training and seminars. . . in conjunction with Research and Development" regarding the petitioner's and foreign entity's food products,

including instruction regarding product components, preparation methods, storage methods, and recipes, the record is devoid of any evidence regarding the type and length of specialized training undergone by the beneficiary. As noted above, the training certificate provided by the foreign entity only references general management courses completed by the beneficiary. Further, the petitioner did not substantiate its statement that "only specialized personnel with the same level as [the beneficiary] are selected to participate in such trainings and have the privilege of gaining proprietary knowledge regarding some of the company's food recipes and preparation techniques." Even if the petitioner had established that the beneficiary actually completed this training, the petitioner provided no basis for determining how many "specialized personnel with the same level" completed the same training, such that it could be considered "advanced" within the petitioner's organization. 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. Regardless, as discussed above, there is no evidence that knowledge of "proprietary" recipes and food preparation techniques is actually required to perform the duties of the position offered in the United States.

Based on the petitioner's statements and the evidence presented, the AAO cannot conclude that the beneficiary qualifies as "key personnel" within the petitioner's family of companies based on her training and previous assignments. *See Matter of Penner*, 18 I&N Dec. at 53. The evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's products or procedures as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. While it may be correct to say that the beneficiary is a skilled employee, this fact alone is not enough to bring the beneficiary to the level of a specialized knowledge employee.

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. 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.")

As discussed above, the beneficiary's job description does not distinguish her knowledge as more advanced or distinct among fast food restaurant supervisors or managers employed by the foreign or U.S. entities or by other unrelated companies who operate similar types of businesses. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes and their application in international markets is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, *supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For this reason, the appeal will be dismissed.

Counsel asserts that it is an abuse of discretion for the director to deny the instant petition after approving three previous petitions filed on behalf of the beneficiary for the same position. 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 on 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").

Counsel's assertion is not persuasive. It must be emphasized 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 three other petitions that had been previously filed on behalf of the beneficiary, the prior approvals do 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 petitions filed by the petitioner's predecessor company 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. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present request to amend and extend the beneficiary's status. Further, although counsel argues that the prior findings that the beneficiary possesses specialized knowledge were based on a subjective determination and are therefore excluded from being re-adjudicated based on a finding of material error, the

AAO notes that the term "specialized knowledge" is defined in the statute and the regulations, and that the determination is left to the director's discretion, based on the submission of objective evidence. *See* section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B); 8 C.F.R. § 214.2(l)(1)(ii)(D). As discussed above, the evidence submitted fails to establish that the beneficiary possesses knowledge or that the U.S. position requires knowledge that meets the plain meaning of "specialized knowledge."

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). CIS memoranda merely articulate internal guidelines for CIS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

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 on behalf of the beneficiary, 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). The director is instructed to review the beneficiary's previous nonimmigrant approvals for possible revocation, pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

The petition will be denied 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.