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File: EAC 05 252 52777 Office: VERMONT SERVICE CENTER Date: APR 04 2007

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

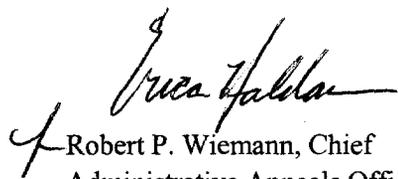
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. 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 employ the beneficiary in the position of social studies teacher 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 states that it is a private high school. The petitioner claims that it is an affiliate of Keio University, located in Tokyo, Japan.

The director denied the petition on October 21, 2005, concluding that the petitioner failed to establish that the position offered to the beneficiary requires an employee with specialized knowledge, that the beneficiary has such knowledge, or that the beneficiary was employed in a specialized knowledge position by the foreign company.

On appeal, counsel for the petitioner states that the petitioner's processes and methodologies would be difficult to impart to another individual in the United States without significant economic inconvenience to the U.S. entity. Counsel contends that the director's decision was based on an incorrect standard when the director stated that the beneficiary's knowledge may be broadly held by others in the same field in Japan. Counsel contends that the director must focus on the teaching industry in the United States rather than in Japan. Counsel asserts that the knowledge required for the position in the United States is not common to the teaching industry in the U.S., and is not easily transferable. Counsel also states that the "essential business processes and procedures are proprietary teaching methods that are at the heart of [the U.S. entity's] business interests and management." Counsel states that the petitioner's teaching methods are different from the rest of the industry. Counsel submits a brief and documentary 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(I)(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 (I)(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 year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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

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

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

The nonimmigrant petition was filed on September 21, 2005. The petitioner indicated on Form I-129 that the beneficiary would be employed as a "Teacher of Social Studies." In addition, the Form I-129 states that the beneficiary has been employed by the foreign company from November 1, 2004 until July 31, 2005 in the position of Assistant Archival Researcher/Teaching Assistant. In addition, the beneficiary previously worked for the foreign entity from March 2003 until March 2004 in the position of Lecturer/Instructor.

In a support letter dated September 19, 2005, the petitioner described the duties the beneficiary performed for the foreign company in Japan as the following:

From November 2004 through July 2005, [the beneficiary] was employed by [the foreign entity] in Tokyo, Japan as a Researcher and Teaching Assistant in Japanese History, preparing and delivering lectures to students, as well as assisting in the compilation, administration and grading of examinations. From April 2003 through March 2004, [the beneficiary] served in the position of Lecturer/Instructor [for the foreign entity] in Tokyo, Japan, performing essentially the same duties as those of the "U.S. Position" described above. [The beneficiary] was responsible for all aspects of classroom instruction in the area

of Japanese History and related subjects in accordance with the teaching models and educational standards, processes, and procedures of [the petitioner]. She prepared and delivered lectures to students, as well as compiled administered and graded examinations based on these lectures. [The beneficiary] advised students on academic curricula and university options, and attended faculty meetings and educational conferences. [The beneficiary] has extensive experience leading classroom instruction in History, Social Studies and related subjects within the [petitioner's] school system, giving her the specialized knowledge required for the position of Teacher of Social Studies at [the U.S. company], and qualifying her for an L-1B intra-company transfer visa.

In addition, the petitioner provided the following description of the beneficiary's proposed position as a teacher of social studies in the United States:

In this position, [the beneficiary] would be responsible to all aspects of classroom instruction in the area of Social Studies and related subjects in accordance with the teaching models and educational standards, processes, and procedures of [the petitioner's group]. More specifically, [the beneficiary] would prepare and deliver lectures to students, as well as compile, administer and grade examinations based on these lectures. She would also advise students on academia curricula and university options. In addition to her classroom teaching responsibilities, [the beneficiary] would conduct research in the area of Social Studies, and would review new textbooks for possible inclusion in course instruction. [The beneficiary] would also attend and participate in faculty meetings and educational conferences.

The petitioner asserted that the beneficiary qualifies for the position in the United States since she has "conducted classroom instruction in the employ of [the petitioner's] schools for one year and nine months in Tokyo." The petitioner asserts that through this practical experience, the beneficiary developed a specialized knowledge of "Japanese educational regulations, requirements, and guidelines" and "an advanced level of knowledge and experience in the organization's educational policies and procedures."

In support of the petition, the petitioner submitted an informational brochure for its school and a certificate of employment from the foreign entity.

On September 26, 2005, the director issued a notice requesting additional evidence in order to establish that the beneficiary has specialized knowledge. Specifically, the director requested: (1) evidence that the beneficiary's proposed job duties in the U.S. require specialized knowledge, including a comparison of the beneficiary's credentials with those similarly employed in the field; (2) evidence that the beneficiary has been and will be employed in a specialized capacity, including evidence to affirm that the processes and procedures utilized in performing the proffered duties are indeed specialized in nature; (3) a more detailed description of the nature of the procedures used by the beneficiary; (4) documentary evidence establishing the beneficiary possessed specialized knowledge above that which is normally possessed by other teachers in the industry; (5) evidence to establish that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; (6) documentation of the total length of classroom or on the job training courses, including a copy of the training syllabus; (7) a description of the minimum amount of time required to train a person to work in the position of social studies teacher; (8) the number of

employees at the U.S. company and at the foreign company; and, (9) a description of the type of training program the U.S. employees attended in order to adequately perform the duties of the proposed position, and documentary evidence of this training program.

The petitioner responded to the director's request for evidence on October 11, 2005. Counsel for the petitioner submitted a letter dated October 7, 2005, responding to the director's request for additional evidence. In response to the director's request that the petitioner demonstrate that the beneficiary has specialized knowledge or has been employed in a specialized knowledge capacity, counsel for the petitioner explained that the U.S. entity is an "international, co-educational secondary school" with the mission to prepare students to enter the petitioner's university in Japan and other leading colleges and universities. Counsel asserted that the petitioning company combines "traditional 'receptive/passive' Japanese educational methods with an 'active' education classroom teaching style which encourages students to observe, think, and express themselves." Counsel further stated that the U.S. school conducts approximately 70% of the classes in English and 30% of the classes in Japanese. In addition, the U.S. school provides "curricula, instructors, counselors and support to Japanese students in accordance with government standards established by the Japanese Ministry of Education as 'an overseas educational institution,' and is accredited with the U.S. education authorities." Counsel explained that the petitioner tailors its curriculum to satisfy the guidelines for Japan and the United States.

Counsel further explained that many of the students that attend the U.S. school will go on to attend universities in Japan and thus the curriculum must prepare the students for an education in Japan. Counsel states that the U.S. entity's curriculum "dictates that certain specific subject matter, specifically Japanese History, Japanese Literature, Japanese Civics and Government, and Japanese Language be taught exclusively in Japanese by educators who are credentialed in Japan for the subject matter with teaching certificates or, in the alternative, by educators with experience teaching in the Japanese school system, and with an intimate knowledge of Japanese culture and its oral and written language." Counsel also asserts that in order to satisfy the high standard established by the petitioning organization, the position of teacher of social studies is a position that "requires specialized knowledge of the Japanese educational system, teaching methods, and standards texts." Counsel states that the beneficiary has specialized knowledge of the petitioner's techniques and "intimate knowledge of Japan's language, culture and its history by virtue of her education, experience, and Japanese teaching certification."

In the petitioner's response, counsel further compared the beneficiary's knowledge to those similarly employed in the field. Counsel stated that the beneficiary is special and distinct "among U.S. teachers generally and among U.S. workers who teach at [the U.S. entity] because they are not similarly qualified by their academic background and work experience to successfully teach these specialized courses in Japanese using Japanese texts."

In response to the director's request for the petitioner to demonstrate that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, counsel explained that the beneficiary's ability to "read and teach with Japanese texts in Japanese, and to prepare Japanese class outlines and administer tests in Japanese" is not general knowledge throughout the industry.

Finally, in response to the director's request for information on the manner in which the beneficiary has gained her specialized knowledge, counsel for the petitioner outlined the beneficiary's educational background and work experience with the petitioner. Counsel asserted that the beneficiary was awarded a bachelors' degree and a master's degree in history, and is in her third year of studies for her Ph.D. in history. In addition, counsel states that the petitioner employed the beneficiary for nine months as a researcher and teaching assistant in Japanese history, and one year as a lecturer/instructor. During her employment with the foreign company, the beneficiary was responsible for the "compilation, administration and grading of examination in Japanese;" "all aspects of classroom instruction in the area of Japanese history and related subjects in accordance with the teaching models and educational standards, processes, and procedures of the [petitioning company]"; "prepared and delivered lectures to students"; and "advised students on academic curricula and university options"; and "attended faculty meetings and educational conferences." Counsel asserted that the petitioner does not provide a formal training program but instead the beneficiary developed her specialized knowledge by "practicing the teaching methods and acquiring a high level of skill through her work experience, through her studies and through her Japanese teaching certificates."

Counsel emphasized that the beneficiary possesses teaching certification credentials from Japan; advanced knowledge of the course subject manager, the ability to read, speak and teach in Japanese, and noted that these skills could not be easily transferred to an individual in the United States. Counsel asserted that the "required depth of knowledge could only be gained by an individual who spent considerable time in Japan to learn the complexities of the native language and culture in addition to pursuing studies of Japan's history and Japanese educational standards and teaching methods."

In response to the director's request, the petitioner submitted a list of authorized textbooks for high school Japanese history; a sample course study for Japanese history used by the petitioner; a specialized high school teaching certificate for the subjects of geography and history issued to the beneficiary from the Chiba Board of Education; a specialized junior high school teaching certificate for the subject of social studies issued to the beneficiary from the Chiba Board of Education; a certificate of enrollment for the beneficiary issued by Keio University; a copy of the beneficiary's academic record from Keio University; a graduation certificate issued to the beneficiary; and an employment letter for the beneficiary.

On September 21, 2005, the director denied the petition. The director observed that based on the duties described by the petitioner, it did not appear that the beneficiary has specialized knowledge or that the position requires specialized knowledge. The director stated that the "knowledge necessary to perform classroom instruction in the area of social studies appears common to the industry in Japan" and the teaching models and methodologies practiced by the petitioner appear easily transferable to other teachers. The director found that the petitioner did not establish that comparable employees with knowledge and training similar to that possessed by the beneficiary could not perform the proposed duties. The director further determined that the beneficiary did not appear to possess knowledge or expertise beyond what is commonly held in her field.

On appeal, counsel for the petitioner states that the petitioner's processes, which include the Japanese educational system and standards and the petitioner's teaching methods, and the petitioner's products, which is based on a comprehensive course curriculum and subject matter of Japanese Social Studies taught in native Japanese, would be difficult to impart to another individual in the United States without significant economic inconvenience to the U.S. entity. Counsel contends that the director's decision was based on an incorrect

standard when the director stated that the beneficiary's knowledge may be broadly held by others in the same field in Japan. Counsel contends that the director must focus on the teaching industry in the United States rather than in Japan. Counsel asserts that the knowledge required for the position in the United States is not common to the teaching industry in the U.S., and is not easily transferable. Counsel also states that the "essential business processes and procedures are proprietary teaching methods that are at the heart of [the U.S. entity's] business interests and management." Counsel states that the petitioner's teaching methods are different from the rest of the industry. Finally, counsel states that only an examination of the knowledge possessed by the beneficiary is necessary to demonstrate whether the individual qualifies for L-1B classification as affirmed in a legacy Immigration and Naturalization Service (INS) memorandum. See Memorandum from ██████████ Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo"). Counsel also cites *Matter of Penner*, 18 I & N Dec. 49 (Comm. 1982), noting that the AAO looked for "elements beyond general job tasks and duties, defining specialized knowledge as being related to the proprietary interests of the business and its management, and concerning skills or knowledge not readily available in the job market."

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Based upon the vague job description of the proposed duties and lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In the present matter, the petitioner provided a generic description of the beneficiary's intended employment with the U.S. entity and of her proposed responsibilities as a social studies teacher at the petitioner's academic institution that fails to identify, much less document, how the beneficiary's performance of the proposed job duties distinguishes her knowledge as specialized. The job description submitted could easily describe any teacher position focusing on Japanese history and culture, and makes no mention of any specialized skills or knowledge utilized in the position. The petitioner emphasizes throughout the record that its school offers a unique curriculum as it is tailored to satisfy the educational requirements of both the United States and Japan. However, the petitioner offers no further explanation regarding the beneficiary's experience with the petitioner's claimed "proprietary" teaching methods outside of her employment with the foreign company for one year and nine months. The petitioner does not attempt to fully describe the complexity of the petitioner's teaching process and methods, or adequately explain why other employees could not be trained to teach with the petitioner's methods. 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)).

The petitioner has repeatedly asserted that the petitioning company's processes and procedures are proprietary teaching methods due to the fact that the U.S. entity is a prestigious academic institution and its curriculum provides students with an education that satisfies the educational requirements of the United States and Japan. The petitioner did not provide an explanation of the petitioner's proprietary teaching methods except noting that some of the classes are taught in Japanese and that the petitioning company

combines "traditional 'receptive/passive' Japanese educational methods with an 'active' education classroom teaching style which encourages students to observe, think, and express themselves." The petitioner does not explain how this proprietary teaching method is any different from teaching methods utilized by other international academic institutions. Furthermore, there is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that her level of knowledge is comparatively "advanced." 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.

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and procedures pertaining to Japanese social studies teaching positions within the U.S. company are different from those applied for other academic institutions providing education in Japanese social studies. In addition, the petitioner has not explained how the knowledge of the petitioner's teaching methods rises to the level of specialized knowledge, particularly since the methods do not appear to differ from teaching methods utilized by academic institutions. The methods include lecturing, classroom interaction, preparing examinations, grading examinations, and providing guidance to the students. The petitioner emphasizes that there is a difference since the classes are taught in Japanese and the subject matter relates to Japanese history and culture. Teaching a course in a different language or in a subject matter not related to the United States does not rise to the level of specialized knowledge as required by the regulations.

While academic institutions may develop a teaching program tailored to its own needs and its student's needs, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and teaching standards would amount to "specialized knowledge." It appears that the petitioner employs individuals who have received a degree in education, and there is no evidence that the petitioner's employees must undergo any specific training in the petitioner's proprietary teaching methods.

In addition, the petitioner did not submit any documentation to evidence that the beneficiary received additional training that was not provided to other teachers employed by the foreign company. Thus, the AAO cannot conclude that the beneficiary has an "advanced knowledge" of the petitioner's proprietary teaching methods over and above from other employees of the petitioner or other employees in the teaching industry. The petitioner did not distinguish the beneficiary's knowledge, work experience, or training from those of the other employees within the organization. The beneficiary had worked with the foreign company for one year and nine months, however, the petitioner did not submit documentation evidencing that the beneficiary received specific training in the petitioner's proprietary teaching methods. Based on the petitioner's statements and the evidence presented, it is impossible to classify the beneficiary's knowledge of the petitioner's techniques and methods as advanced. The AAO cannot conclude that the beneficiary's role is "of crucial importance" to the organization or that she 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. 49, 54 (Comm. 1982). It may be correct to say that the beneficiary is a highly skilled employee, but this is not enough to bring the beneficiary to the level of "key personnel."

The beneficiary's claimed specialized knowledge is based on her native knowledge of the Japanese language and culture, her academic credentials in teaching, and work experience. Although it may be unusual for an academic institution in the United States to provide a curriculum in English and Japanese that satisfied the educational requirements for the United States and Japan, mere familiarity with the Japanese language and culture does not constitute specialized knowledge. The combination of the beneficiary's language and cultural knowledge, education and work experience does not rise to the level of specialized knowledge contemplated by the statutory and regulatory definitions and precedent decisions. Again, the claimed specialized knowledge must relate specifically to the petitioning company.

On appeal, counsel asserts that the director erred by comparing the beneficiary's specialized knowledge in teaching Japanese social studies from other teachers in Japan. It is appropriate for CIS to examine the home country as well when considering the general knowledge of a product within a specific industry, especially given that the same specialized knowledge was claimed for the beneficiary's required one year of employment abroad with the foreign entity. While the method of teaching social studies in Japanese does not need to be proprietary, it should not be common and generally shared by other Japanese teachers. In this case, no evidence was presented indicating that a Japanese-speaking social studies teachers are uncommon in Japan, or that the teaching methods used by the beneficiary are uncommon or somehow different from other teachers in that region of the world. Accordingly, the beneficiary could not be considered to be employed abroad in a position involving specialized knowledge, as required by 8 C.F.R. § 214.2(1)(3)(iv).

On appeal, counsel restates the petitioner's "unique" products, the beneficiary's experience with the foreign entity's "unique products," and the inconvenience the petitioner would experience if it is unable to retain the beneficiary's services, and concludes that she has consequently satisfied the definition of specialized knowledge. Additionally, counsel alleged that the beneficiary's knowledge is valuable to the petitioner's productivity, competitiveness, and financial position. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. The beneficiary's contribution to the economic success of the academic institution may be considered; however, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(1)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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

The AAO does not dispute the likelihood that the beneficiary is a teacher who understands the petitioner's teaching methods and the Japanese culture, and is able to apply it within the context of the petitioner's specific environment. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter*

of *Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business’ operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term “specialized knowledge” is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, “[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for “key personnel.” See generally, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term “key personnel” denotes a position within the petitioning company that is “of crucial importance.” *Webster’s II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered “important” to a petitioner’s enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee. Accordingly, based on the definition of “specialized knowledge” and the Congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

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

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

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

The record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other teachers that teach Japanese social studies. The petitioner has not established that the beneficiary has received extensive training or has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have "advanced" knowledge of the company's business processes, procedures and methodologies, as well as "specialized knowledge" in the petitioner's proprietary teaching methods created by and utilized by the company. However, as the petitioner has failed to document any specific training in the petitioner's claimed proprietary teaching methods other than the beneficiary's one year and nine months work experience with the petitioner, or otherwise describe or document the purported knowledge, these claims are not persuasive. 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. Without this information, the AAO has no basis to compare the beneficiary's knowledge to that of other workers within the company, and therefore it can not be concluded that her knowledge is "advanced." There is no indication that the beneficiary has any knowledge that exceeds that of any experienced teacher, or that she has received special training in the company's methodologies or processes which would separate her from any other similarly employer worker with the foreign company. However, notwithstanding the lack of documentation, the petitioner

failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

The petitioner noted that the beneficiary obtained her specialized knowledge by working with the foreign company for one year and nine months. If the AAO were to follow the petitioner's reasoning, then any employee who had worked as a teacher with the parent company for more than one year possesses specialized knowledge. However, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee status. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

In sum, the beneficiary's duties and skills demonstrate knowledge that is common among teaching professionals working in the beneficiary's specialty in the educational field. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and methods used by the petitioner are substantially different from those used by other academic institution. 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 his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

The legislative history of the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. See *1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.