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FILE: SRC 06 054 51191 Office: TEXAS SERVICE CENTER Date: **APR 05 2007**

IN RE: Petitioner:
Beneficiary



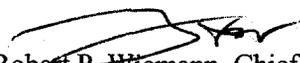
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas limited liability company, states that it is engaged in the provision of services to the nuclear electric power generation industry. The petitioner claims that it is a joint venture between the beneficiary's foreign employer, Numip Engineering, Construction, Maintenance and Production, Ltd., located in Slovenia, and a United States company. The petitioner seeks to employ the beneficiary as a nuclear technician on an intermittent basis for a three-year period.

The director denied the petition, concluding that the petitioner had not established that the position offered to the beneficiary requires an individual possessing specialized knowledge, or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner disputes the director's decision and asserts that the director "does not seem to appreciate the high level of technical skill and advance[d] knowledge that are required to successfully and safely perform the mechanical maintenance duties of a Nuclear Technician." Counsel submits a detailed brief and extensive documentary evidence 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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge and was employed by the foreign entity for at least one year in a position involving specialized knowledge within the three years preceding the filing of the petition; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has 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 8, 2005. In a letter dated December 7, 2005, the petitioner indicated that the beneficiary will be employed by the U.S. company as a nuclear technician "to provide reactor vessel services, maintenance, and refueling services to nuclear power plants at various facilities in the United States," and noted that he currently provides the same services to nuclear power plants in Europe. The petitioner further described the beneficiary's proposed role as follows:

The formation of [the petitioner] . . . was created to provide inspection, maintenance and other related services to the nuclear power generation industry on a worldwide level. Nuclear technicians are typically highly skilled mechanical technicians with numerous years of training and experience servicing the nuclear power industry. [The petitioner] plans to transfer [the beneficiary] as a nuclear technician directly from [the foreign entity] to provide reactor vessel services, maintenance and refueling services to nuclear power plants owned by GE and Westinghouse, and other U.S. nuclear power companies. Specifically, [the beneficiary] will be transferred to perform the following services for American nuclear power plants:

- Opening and closure of nuclear reactor vessels;
- Cleaning of the reactor vessel flange and studs;
- Refueling services;
- Welding work on dry-cask storage containers for spent fuel;
- Maintenance of primary valves in nuclear plants;
- Maintenance of snubbers; and

- Maintenance of other specific nuclear components.

The petitioner indicated that the beneficiary had been employed by the foreign entity in Slovenia since October 1999, and noted that "by virtue of his years of experience in the nuclear power service industry, [the beneficiary] has an advanced knowledge of [the petitioner's] services to the nuclear power generation power industry." The petitioner emphasized that the beneficiary "is qualified to replace reactor vessels, conduct maintenance, and perform refueling operations at any nuclear power plant."

The petitioner stated that prior to joining the foreign entity, the beneficiary had worked as a mechanic and maintenance specialist for various firms and institutions in the nuclear power industry since 1987, and gained experience throughout his career in primary valve maintenance, maintenance of snubbers, opening and closure of reactor vessels, clearing of reactor vessel flange and studs, outage work on turbines, fitting and orbital welding work, and other maintenance, fitting, and welding duties.

The petitioner also noted the beneficiary's formal technical education in engineering and metallurgy, provided a list of twelve certifications held by the beneficiary, and provided copies of the noted certificates, which included courses in business English, forklift operation, automatic welding system supervision and maintenance, operation of welding devices, radiation protection, and "head of operations of maintenance contractors" training, among others.

The petitioner concluded that "based on his numerous years of experience, training and the aforementioned certifications, [the beneficiary] has specialized knowledge of [the petitioner's] maintenance and refueling services to the nuclear power generation industry."

In addition, the petitioner submitted a letter from the foreign entity, dated November 7, 2005, which confirmed the beneficiary's employment in the position of "Maintenance II" since October 18, 1999. Finally, the petitioner submitted a document prepared by the foreign entity titled "Informative Offer: Personnel to be Engaged in Nuclear Services in the U.S.A.," dated September 2004. The document lists a total of seventeen individuals, including the beneficiary, and states that "listed people can be individually included in the client's working groups and make sufficient use of English language. All of them have experience at Krsko NPP, Westinghouse PWR, 700 Mwe." The beneficiary is designated as a "highly skilled worker/fitter" who can fill a position as a "technician/work supervisor."

On December 21, 2005, the director issued a request for additional evidence instructing the petitioner as follows:

- Please submit a record – as opposed to merely a letter – from your human resources department detailing the manner in which the beneficiary has gained his specialized knowledge. Documentation should indicate pertinent training courses in which the beneficiary has been enrolled while working for your company, as well as the duration of the courses, the number of hours spent taking the courses each day.
- Indicate the minimum amount of time required to train an employee to fill the proffered position. Specify how many workers are similarly employed by your organization. Of

these employees, place indicate how many have received training comparable to the training administered to the beneficiary.

- Specify the amount of training is required [sic] for an already competent Nuclear Technician to become competent in the petitioner's methodologies, techniques, tools, and applications that the beneficiary is to use.
- What does this training specifically consist of?
- Specify the number of hours of academic classroom training and of "On the Job" training.
- Specify the percentage of petitioner's Nuclear Technicians who are competent in the methodologies, techniques, applications and tools that [t]he beneficiary is to use.

The director also requested that the petitioner submit organizational charts for the foreign and United States entities showing the location of the beneficiary's current and proposed positions, the level of supervision, and the number and types of positions the beneficiary has supervised abroad and will supervise in the United States, if any.

The petitioner submitted its response to the director's request on January 17, 2006. The petitioner's response included a letter from the foreign entity, dated December 28, 2005, in which it depicted the general structure of the company. The foreign entity noted that the beneficiary works within the projects group of the company's technical department, and at times has supervisory responsibilities over five personnel including maintenance specialists, specialist welders, and fitters. The foreign entity indicated that out of a staff of 50 permanent employees, the company has approximately eight workers who have comparable experience and training.

The foreign entity further stated:

A professional like [the beneficiary] cannot be trained overnight. An individual seeking to successfully perform [the beneficiary's] position needs at least five years of focused experience at nuclear power plants and specific training and certifications to be able to perform such position. It should be emphasized that most of [the beneficiary's] competences in the nuclear field come from his on the job training at various projects over the past six years, especially at the Krsko Nuclear Power Plant (NPP).

While working at several different nuclear outages at Krsko, [the beneficiary] was responsible for: primary valves (outage in year 2003 and 2004); project of preparing technological IONICS in year 2004; opening of steam generators in year 2002; maintenance of snubbers in the years 2000-2004; opening and closure of the reactor vessel in the year 2003; and cleaning of the reactor vessel flange and studs in the year 2003. At the Thermal Power Plant Brestanica, [the beneficiary] performed outage work on turbines. Lastly, [the beneficiary] gained invaluable training and experience at the Krka Novo mesto facility, where he worked on Project Beta Sentjernej and was responsible for fitting and orbital welding work; waste water treatment maintenance; synthesis 4, Palettes, and Sulfasalazin production maintenance.

The foreign entity further indicated that apart from work experience and on-the-job training, nuclear technicians like the beneficiary "must consistently obtain and extend all necessary certifications." The beneficiary's twelve certifications were listed, with a notation that each of the certifications required anywhere from eight to 40 hours of training. The foreign entity further indicated that "an individual like [the beneficiary] must obtain numerous years of experience working on nuclear outages and must continuously seek and extend necessary certifications to remain qualified as a Nuclear Technician. Without the proper on-site experience and certifications, [the beneficiary] would not be authorized to work at nuclear outages." Finally, the foreign entity concluded that the beneficiary, based on his experience, training and certifications, "has specialized knowledge of [the petitioner's] maintenance and refueling services to the nuclear power generation industry."

The director denied the petition on January 28, 2006, concluding that the petitioner had failed to establish that the offered position requires the services of an individual possessing specialized knowledge, or that the beneficiary possesses such knowledge. The director noted that the petitioner's response to the request for evidence suggested that the beneficiary gained much of the required skills and experience for his job prior to joining the foreign entity, which would indicate that the beneficiary's knowledge is not special to the petitioner or to the petitioner's interests. The director further observed that the beneficiary's competencies in the nuclear field came from his on-the-job training at various projects, particularly at the Krsko Nuclear Power Plant. The director concluded that while the beneficiary may possess knowledge and skills particular to his occupation in the nuclear industry, the petitioner had failed to demonstrate that his knowledge and skills are particular to the company's interests, or that they are special or advanced.

On appeal, counsel for the petitioner asserts that the director has downplayed the beneficiary's knowledge and "does not seem to appreciate the high level of technical skill and advance knowledge that are required to successfully and safely perform the mechanical maintenance duties of a Nuclear Technician." Counsel notes that perhaps the petitioner did not provide "a simple and clear picture of how nuclear maintenance is performed, which may have in turn led the USCIS adjudicator to make an incorrect hasty decision."¹

Counsel emphasizes that "extensive preventive maintenance and testing surveillance programs exist to ensure that significant equipment that is used in nuclear power plants will function safely at all times." Counsel explains that the beneficiary is being transferred in order to work on nuclear outages on an intermittent basis, noting that outages last from 30 to 60 days and are used to perform activities that cannot be done when the plant is operating, such as: refueling the reactor; removal of the reactor head and upper internals; preventive maintenance on equipment that must run at all times; and modifications or replacement of major equipment that cannot otherwise be shut down. Counsel notes that nuclear technicians typically specialize in one or more of these services and must go through "craft-specific training" in order to qualify to perform each type of service. Counsel provides a summary of each of these four specific maintenance functions.

¹ Counsel also alleges that the director's decision indicated a denial for an L-1A petition and suggests that the director applied an incorrect standard in reviewing the submitted evidence. A review of the director's decision reveals no reference to the L-1A visa category other than on the cover sheet and counsel's contention is thus unsupported.

Counsel further asserts that the director incorrectly determined that the beneficiary's knowledge is not special to the petitioner's interests, alleging that the director "made this determination simply because [the beneficiary] obtained his training, experience, and special skills with [the foreign entity], a joint venturer and member of [the petitioner]." Counsel states that this reasoning is flawed as "the whole purpose of a joint venture is to combine the services and knowledge of two or more organizations to deliver an ultimate good or service that could not otherwise be provided by one entity." Counsel emphasizes that the petitioning company was formed to address an increasing demand for nuclear technicians who are qualified "to service, inspect, and perform nuclear maintenance for plants on a worldwide basis." Counsel contends that the beneficiary's advanced knowledge of the foreign entity's services "automatically gives him special knowledge of [the petitioner's] intended worldwide nuclear maintenance service."

Counsel reiterates the list of specific certifications held by the beneficiary, asserting that the denial of the petition in spite of this evidence suggests that the director "did not take the time to read the entire L-1B petition." Counsel also highlights the fact that "there is a major shortage of qualified personnel in the entire nuclear maintenance industry, with special regard to someone with [the beneficiary's expertise]. The petitioner submits job postings for nuclear technician positions from two web sites, noting that "this information highlights the high demand for Nuclear Technicians and the lack of qualified personnel to fill these jobs." Counsel asserts that the "major shortage of these types of workers means that the skill set possessed by [the beneficiary] is not common to the industry." The petitioner submits an article from *Nuclear News* magazine, which includes a discussion of manpower issues affecting nuclear power plants.

Finally, counsel highlights that the petitioner previously received two L-1B approvals for the transfer of nuclear technicians to the United States to perform non-destructive testing and quality assurance inspections during nuclear outages. Counsel states that "it is an abuse of the USCIS's discretion to deny petitions or applications that have previously been approved under similar or identical facts." Counsel states that the denial of the instant petition is inconsistent with its previous grant of "L-1B authority" to the petitioner.

In support of the appeal, in addition to the documents mentioned above, the petitioner submits a reference letter dated March 22, 2006 from the technical director and maintenance manager of the Krsko nuclear power plant in Slovenia, where the beneficiary has performed services as an employee of the foreign entity. The letter indicates that the beneficiary has "unique knowledge as a nuclear maintenance technician" and that his experience and qualifications "are not possessed by many other individuals in the field of nuclear maintenance." The reference letter notes the beneficiary's participation in six outages at the Krsko nuclear facility, as well as his participation in other projects, including steam generator replacement, installation of new snubbers, and installation of a new water treatment facility. The letter further states:

Let us assure you that [the beneficiary's] advance knowledge is unique and not possessed by many individuals who perform mechanical maintenance services at our nuclear facility. [The beneficiary] as a nuclear maintenance technician, is also well known in our plant for:

- Use of state-of-the-art technologies and techniques for in-place and bench snubber testing;
- Use of modern tools and equipment for primary side valve maintenance and testing;

- Maintenance of mechanical and hydraulic snubbers which are very delicate pieces of equipment...;
- His experience in reactor services and use of modern equipment (hydraulic stud tensioning device, stud cleaning device, special reactor vessel flange cleaning devices...) are very valuable for both regular nuclear power outages and reactor vessel head replacement. Not only does our Krsko NPP necessarily require these services, but so do the majority of the world's nuclear power plants.

These are only possessed by a selected group of individuals worldwide. This is true for many reasons. First, not many people are interested in a career in the nuclear generating plants because the work is extremely demanding, dangerous, and requires a high level of skill. Simultaneously, the baby boomer generation of personnel working in nuclear power plants is retiring worldwide. Second, most of the individuals who do embark on a career in nuclear maintenance are more prone to specialize in instrumentation and control, or what is commonly referred to as electrical maintenance. Thus [the beneficiary's] mechanical maintenance skills related to primary side nuclear equipment are very valuable.

Upon review, and for the reasons discussed herein, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge, or that he would be employed in the United States organization in a specialized knowledge capacity.

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(1)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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. *See 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)).² 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:

² 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, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

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. As discussed further below, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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*, the term "specialized knowledge" is inherently 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.

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.")

Therefore, based on the intent of Congress in its creation of the L-1B visa category, even if the petitioner were to demonstrate that the beneficiary has received some specialized training, acts as a specialist, or performs highly technical duties, this showing will not necessarily establish eligibility for L-1B intracompany transferee classification. The petitioner must submit evidence to show that the beneficiary has "special" or "advanced level" knowledge within the company and is being transferred to the United States as a "key employee." This has not been successfully demonstrated in the instant case, where the beneficiary appears to be one among a large number of the petitioner's and foreign entity's employees who possesses similar training and knowledge.

In this case, the petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate his current or proposed position from that of any other nuclear technician specializing in the mechanical maintenance field. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner neither asserted nor provided evidence that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or that he possesses an advanced knowledge or expertise in the company's processes and procedures. See 8 C.F.R. § 214.2(l)(1)(ii)(D). While the beneficiary may in fact possess extensive knowledge and highly developed skills with respect to the mechanical maintenance in the nuclear power generation field, the petitioner has not identified any aspect of the beneficiary's current or proposed position that involves special knowledge *specific to the petitioning organization*, and has therefore failed to satisfy the essential element of eligibility for this visa classification.

The beneficiary's training and experience in his field, although gained in part during his employment with the foreign entity, cannot be considered specialized knowledge related to the petitioning organization and therefore do not establish "specialized knowledge" as contemplated by the statute and regulations. Any worker who has worked extensively in the beneficiary's area of expertise could reasonably be expected to possess essentially the same knowledge, skills and experience as the beneficiary without having worked for the petitioner or the foreign entity. Although the petitioner stresses the importance of the beneficiary's certifications in his field, the petitioner also stated that such certifications are required for any technician seeking to perform the same type of work in a nuclear power plant. There is no evidence that any of the beneficiary's training was related to processes or procedures that are specific to the petitioner or foreign company. Rather, the evidence shows that the beneficiary has been trained in technical skills required for his craft, including welding, soldering, radiation protection, automatic welding system maintenance, and operator valves, and that he has the requisite medical clearances for his occupation.

Further, in addition to failing to demonstrate the beneficiary's training was specific to the petitioner's multinational organization, the petitioner has offered no information or documentary evidence that would

distinguish the petitioner's and foreign entity's processes or operating environment from that of any other company engaged in providing technical services to the nuclear power generation industry. 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.

As noted above, the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. Although counsel refers to the beneficiary's extensive experience in the nuclear mechanical maintenance field, it is clear that the knowledge and skills that allow him to successfully perform his duties are available to, and in fact, required of any nuclear technician working in his area of specialization. The petitioner has not explained how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others with a similar educational and professional background. While it is undoubtedly helpful that the beneficiary is familiar with the petitioner's and foreign entity's business, the petitioner has not established that prior experience with the foreign entity is actually required in order to perform the proposed duties in the United States. Rather, the key requirements for the job appear to be several years of experience as a nuclear technician with prior experience in performing mechanical maintenance and refueling tasks during nuclear power plant outages. Based on the evidence of record, the AAO finds that no such distinction could reasonably be made between the beneficiary's knowledge, skills and experience and that possessed by other experienced nuclear technicians specialized in the mechanical maintenance field.

Furthermore, the petitioner was specifically requested to submit additional evidence that would assist USCIS in identifying exactly what processes, procedures or methodologies specific to the petitioner's organization constitute the beneficiary's specialized knowledge, and whether the beneficiary's knowledge could be considered "advanced," compared to other similarly employed workers within the organization. The only information submitted in response was the foreign entity's unsupported statement that the beneficiary is one of eight employees out of a staff of 50 who possess similar training and experience. The petitioner also noted that the beneficiary "from time to time" supervises other skilled personnel, but did not further elaborate on the beneficiary's supervisory duties, or otherwise attempt to distinguish his knowledge or skills as advanced compared to his co-workers. The petitioner's response did not contain the level of detail requested by the director. 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, the above-referenced document from the foreign entity titled "Informative Offer: Personnel to be Engaged in Nuclear Services in the U.S.A." indicated that the beneficiary is one of 17 employees of the foreign entity available to provide reactor services, welding and other mechanical maintenance and modification services in the United States on one month's notice. Accordingly, it is reasonable to question the credibility foreign entity's assertion that only eight employees within the Slovenian company hold qualifications that are similar to the beneficiary's. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

While it appears that the beneficiary may have some experience as a first-line supervisor of lower-level skilled workers, the position description provided for the proposed U.S. position does not suggest that he will

be performing supervisory duties or even performing at an advanced or senior level compared to other employees. Therefore, even assuming that the petitioner had established that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures, there is no evidence in the record to establish that the position with the United States entity requires such knowledge.

In addition, the petitioner failed to offer any information regarding the company's current U.S.-based workforce. The petitioner indicated on Form I-129 that the U.S. company employs 220 people. Considering that the company was formed for the sole purpose of providing nuclear technicians who are qualified to service, inspect, and maintain nuclear power plants, it is reasonable to assume, and has not been shown otherwise, that a significant proportion of the U.S. workforce possesses knowledge and qualifications that are similar to those possessed by the beneficiary. Again the petitioner has failed to offer any evidence or explanation that would distinguish the beneficiary's knowledge as advanced compared to the remainder of the foreign entity's and petitioner's similarly employed workforce. The AAO acknowledges the reference letter from the foreign entity's client, submitted on appeal, but finds insufficient evidence in the record as a whole to establish that the beneficiary's knowledge is specific to the petitioner and/or the foreign entity or that the beneficiary's knowledge is advanced compared to his peers within either company. Regardless, the petitioner's and counsel's unsupported statements are insufficient to establish that the beneficiary's knowledge is special or advanced or that it is so prominent and valuable that he qualifies as "key personnel" within the petitioner's corporate group. *See Matter of Penner*, 18 I&N Dec. at 53.

The beneficiary's knowledge and expertise do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests required by the regulations. As noted above, in *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." In the instant case the petitioner has successfully demonstrated that the beneficiary possesses knowledge, skill and experience which allows him to successfully perform the duties of a nuclear technician specializing in mechanical maintenance of nuclear power plants. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise of a company's product or processes and procedures, rather than skill in a particular field.

The AAO acknowledges the petitioner's and counsel's assertions that there is a worldwide shortage of qualified workers in the nuclear power generation field, particularly in the beneficiary's area of expertise. However, if the AAO were to follow counsel's logic to its rational conclusion, virtually any experienced nuclear technician in any multinational company would qualify for classification as a specialized knowledge worker. The legislative history for this visa classification indicates that Congress understood that the number of admissions under the L-1B 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" *Matter of Penner*, 18 I&N Dec. at 51 (citing the 1970 House Report, H.R. No. 91-851). The L-1B visa classification was not intended to alleviate or remedy a shortage of United States workers. Instead, the H-1B temporary worker provisions contained in section 101(a)(15)(H) of the Act, 8 U.S.C. 1101(a)(15)(H), provide a basis for admission of workers for whom there is a shortage. *Matter of Penner*, at 53-54. Accordingly, counsel's argument that the beneficiary qualifies for L-1B classification based upon a shortage of workers in his occupation is not persuasive.

The legislative history for the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F. Supp. at 16. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The record does not establish that the beneficiary possesses specialized knowledge or that he would be employed primarily in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

On appeal, counsel asserts that USCIS approved two L-1B nonimmigrant petitions that had been previously filed on behalf of other beneficiaries who were coming to the United States to serve as nuclear technicians for the petitioner. A review of USCIS records reveals that the petitioner in fact filed five L-1B petitions in December 2005, three of which were denied. 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, USCIS is limited to the information contained in that individual record of proceeding. *See 8 C.F.R. § 103.2(b)(16)(ii)*.

If the two approved nonimmigrant petitions referenced by counsel were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in denying the instant petition.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions 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 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.

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ORDER: The appeal is dismissed.