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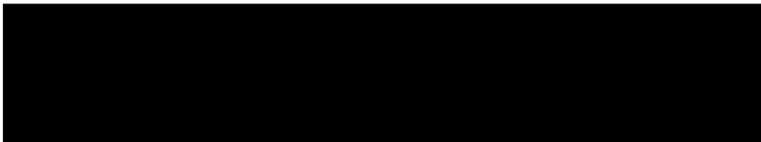
File: SRC 06 036 52870 Office: TEXAS SERVICE CENTER Date: APR 05 2007

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 section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the provision of maritime transportation services. It claims to be an affiliate of the beneficiary's foreign employer, Clipper Elite Carriers, located in Copenhagen, Denmark. The petitioner seeks to employ the beneficiary as its general manager for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed by the foreign entity in a position involving specialized knowledge for one year within the three years preceding the filing of the instant petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director misinterpreted the requirements for the L-1B nonimmigrant classification as outlined in a legacy Immigration and Naturalization Service policy memorandum issued in 1994. Counsel asserts that the beneficiary's knowledge of the petitioner's proprietary software platform, "Glomaris," can be considered both "special" and "advanced," and that he has possessed such knowledge for more than one year. Counsel submits a brief and additional evidence in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

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

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

The issues addressed by the director are: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the beneficiary has been employed in a position requiring specialized knowledge for one year within the three years preceding the filing of the petition. The AAO will also consider the related issue of whether the proposed employment in the United States requires the claimed specialized knowledge.

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

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

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

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

The nonimmigrant petition was filed on November 15, 2005. In a letter dated October 27, 2005, the petitioner asserted that the beneficiary has been continuously employed with its Danish affiliate as a chartering broker since August 2003. The petitioner described the beneficiary's current responsibilities as follows:

In this capacity, the beneficiary is responsible for conducting business within commercial shipping on an international level. He is in charge of trading 12 [vessels operated by the foreign entity] ranging in size of 9,000 to 17,000 tons in European, Arabian and Indian Markets. He negotiates freight rates, terms, and conditions of any employment related to these vessels. He makes the commercial decisions of which cargoes, contracts, and future positions are to be agreed upon regarding these vessels and market segments. In addition, [the beneficiary] ensures that the vessels are performing on an economically satisfying level are [sic] within management's budget and forecasts. He analyzes market and freight rates and from these decides as to which business will secure the best economical returns, keeping in mind future employment that best suits the vessels in the current given market. He determines freight levels are [sic] most suitable in order to keep vessels employed for as much of the year as possible. He researches and implements new strategies aimed at trading the ships within specific lanes such as North Europe to the Mediterranean. Further, he is responsible for reporting vessels [sic] economical performance to shareholders. [The beneficiary] utilizes his

specialized knowledge of [the foreign entity's] operations, vessels, and chartering processes and procedures to perform these duties.

The petitioner further stated that the beneficiary's proposed role in the United States is as general manager of the South American market. The petitioner stated that the beneficiary would perform the following duties:

[The beneficiary] will be responsible for managing the commercial and development aspects of the liner and tramp operations for all vessels between North and South America. He will be responsible for developing the South American market in the break bulk business. He will also be responsible [for] establishing a monthly service between the US Gulf and Brazil and Argentina. He will monitor the coordination of newly appointed agents who will be responsible for the booking of freight. Additionally, he will make all the commercial decisions that will affect the South American region. He will be responsible for scheduling vessels and for the development and communication of present and future clients in trade. Furthermore, he will be accountable to the owning companies to ensure that the vessels are performing at optimal levels and that the returns on investments are satisfactory to the principals and in line with budgets and forecasts which have been presented to the owners of the ships. [The beneficiary] will continue to utilize his advanced knowledge of [the company's] cargo operations, chartering, and vessels to perform these duties.

The petitioner stated that the beneficiary has an International Business Baccalaureate awarded in 2002, more than two years of charter brokering experience with the foreign entity, and "extensive experience" with the company's policies, procedures, and processes regarding vessels chartering, operations, and commercial shipping.

In support of the petition, the petitioner provided a copy of the beneficiary's resume, which indicates that from 2003 to 2005, he completed a "2 years Traineeship for [the foreign entity] in order to gain the skills to conduct business within commercial shipping." According to the beneficiary's resume, he assumed the role of chartering broker for the foreign entity in 2005.

As evidence of the beneficiary's qualifications, the petitioner submitted: (1) a certificate for completion of a course in Maritime Law at Copenhagen University from October 2004 through April 2005; (2) a declaration from the Danish "trade committee for education and training in the clerical trade," dated July 31, 2005, indicating that the beneficiary "has obtained skilled competence as a clerical worker specializing in Forwarding and shipping," and has completed an apprenticeship in compliance with Ministry of Education requirements; and (3) a certificate stating that the beneficiary passed a course of study called "The Shipping Education," at the Maritime University in Denmark as of June 2004.

On November 29, 2005, the director advised the petitioner that the evidence of record was insufficient to establish that the knowledge possessed by the beneficiary is specialized, noting that the plain meaning of the term "specialized knowledge," is knowledge or expertise beyond the ordinary in a particular field, process, or function. The director informed the petitioner that it had not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in the field. The

director, referencing a 1994 legacy Immigration and Naturalization Service (INS) memorandum signed by then Acting Executive Associate Commissioner, James A. Puleo, noting that the memorandum states that an alien would possess specialized knowledge if it were shown that the knowledge is different and advanced from that generally held within the industry. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., Immigration and Naturalization Service, *Interpretation of Special Knowledge* (Mar. 9, 1994) ("Puleo memorandum"). Accordingly, the director instructed the petitioner as follows:

- Submit evidence relating to the unique methodologies, tools, programs, and/or applications that your company uses. Evidence may include your company's brochure or other literature describing the tools your company uses. Please describe in detail how these are different from the methodologies, tools, programs and/or applications used by other companies.
- 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/her specialized knowledge. Documentation should indicate the 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, and certificates of completion of these courses.
- 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, please indicate how many have received training comparable to the training administered to the beneficiary.
- If the specialized knowledge was attained through the course of regular on-the-job experience, please clarify exactly what knowledge was attained through the beneficiary's past employment with the company. For each facet of specialized knowledge, please explain how the particular knowledge attained at that particular time was different from knowledge attained by individuals in the identical or similar position for the company.

In a response dated December 21, 2005, the petitioner indicated that its group of companies developed a fully integrated data platform called "Glomaris" in the late 1990s which is "fully modular with applications for record keeping and processing of data in operations, claim management, voyage monitoring, lay-time calculation and finance." The petitioner stated that its group also markets the software and makes it available to other shipping companies worldwide. The petitioner indicated that Glomaris is the only platform available that is specifically designed to provide data processing and storage for ocean transportation, and thus it "is not possible to define how it differs from other packages as no other complete package exists." The petitioner further indicated that since the program is proprietary "there is no technical support to be found outside the group."

In response to the director's request that the petitioner document the beneficiary's training, the petitioner stated:

[The beneficiary] has received on the job training regarding [the foreign entity's] vessels, chartering, operations, international markets, freight rates, terms and conditions, and

analyzing economic conditions as they related to freight shipping. The use of the program, Glomaris is integral to his daily work. During his employment in the Copenhagen office, [the beneficiary] has been trained in the use of Glomaris. The training is on going and is not being documented as such but is an integral part of the daily activities of all staff within the Group. [The beneficiary's] training in Glomaris has primarily been geared towards Chartering and Operation packages which are the departments he has been working in and he is classified as "super-user" regarding these packages. There is approximately one "super-user" per department who is trained in depth in order to assist, guide, and train other and new staff in the general use of applications.

In response to the director's request that the petitioner specify the minimum amount of training required for the proffered position of general manager, the petitioner stated that the position requires an employee who "can exercise considerable independence from the outset," and implied that a new employee would require an "extensive training period." The petitioner stated that the beneficiary's knowledge of the petitioner's chartering procedures, operations, controlled vessels and proprietary software was gained "throughout his entire two year tenure with our company in Denmark," and noted that it would take "approximately this same time to train an employee to fill the proffered position." The petitioner stated that the company would "experience significant business loss due to sensitive business opportunity timing issues, as well as training related losses, if it was required to accept someone else for this position."

Finally, the petitioner emphasized that Glomaris is an evolving program, with changes and new modules issued on a regular basis. The petitioner stated: "It is intended that one of [the beneficiary's] tasks in the U.S. will be to further train the current staff in Houston in such changes and new additions." In support of its response, the petitioner submitted an overview of Glomaris from the company website, and additional general company information from the petitioner's group's web site.

The director denied the petition on January 4, 2006, concluding that the petitioner had not established that the beneficiary has specialized knowledge. The petitioner further determined that even if the beneficiary had acquired specialized knowledge, "there is no indication that such knowledge has been held for a year prior to filing the current petition." The director noted that the petitioner's claimed specialized knowledge of Glomaris, as well as his knowledge of the petitioner's procedures and operations, "is never clarified beyond generalities." The director also emphasized that the petitioner had failed to provide documentary evidence to establish the extent of the beneficiary's claimed specialized knowledge, referencing the petitioner's statement that training in the Glomaris program "is on going and is not being documented." The director determined that, due to the lack of specificity regarding the claimed specialized knowledge, and based on the lack of supporting documentary evidence, the petitioner had failed to establish that the beneficiary's knowledge is uncommon or advanced, or that it extends beyond mere familiarity with the organizational procedures of the petitioner's group.

On appeal, counsel for the petitioner disputes the director's decision and asserts that the beneficiary's knowledge of the petitioner's products qualifies as "special" and "advanced" as those terms are defined in the above-referenced Puleo memorandum. Specifically, counsel states that the beneficiary's knowledge is uncommon and noteworthy, and therefore "special," because Glomaris is a unique, proprietary program

developed by the petitioning company, and because the beneficiary has been designated a "super-user" for the "Chartering and Operations packages" of the Glomaris program. Counsel further states:

As a "super-user," [the beneficiary] has undergone additional software training, beyond the normal amount of training other employees receive, in order to be able to provide technical support, guidance, and instruction to other users. Thus [the beneficiary's] knowledge of the Glomaris program is clearly uncommon. Out of the 210 employees in the Copenhagen office, only 15 are "super-users." Out of the 15 "super-users," [the beneficiary] is the only person in the Chartering and Operations packages. This establishes that [the beneficiary] is clearly a key employee and that his unique knowledge of the company's product is apart from the elementary or basic knowledge possessed by others within the company.

Furthermore, there is currently only one "super-user" in [the petitioner's] Houston office. The lone "super user" in Houston only has expertise regarding the accounting package of the Glomaris program. [The beneficiary's] services are needed to train the Houston staff on the Chartering and Operations packages, which are essential to successfully continuing vessel operations between North and South America.

Counsel further references the Puleo memorandum, noting that it provides several examples of situations in which a beneficiary may be found to possess specialized knowledge. Counsel cites one such example in which "the foreign company manufactures a product, which no other firm manufactures. The alien is familiar with the various procedures involved in the manufacture, use, or service of the product." Counsel asserts that the beneficiary's situation is similar, because, as "one of the few 'super-users,' [the beneficiary] is intimately familiar with the programming language of the software, its daily use, and the servicing of such product."

Finally, the petitioner states that due to the beneficiary's information technology background "he was designated as a 'super-user' upon his hiring in August 2003." The petitioner states that it is thus "clear that the beneficiary has held such specialized knowledge for more than a year prior to the filing of the current petition." Counsel concludes that the beneficiary's specialized knowledge of the Chartering and Operations packages of the Glomaris program is "fundamental to his proposed position of General Manager of the South American market."

On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge, that the beneficiary has been employed in a position involving specialized knowledge for at least one year within the three years preceding the filing of the instant petition, or that the prospective position requires "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).

Regarding the petitioner's claim of specialized knowledge, it must be noted that in making a determination as to whether the 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 U.S. Citizenship and Immigration Services (USCIS) is bound to base its decision on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist USCIS employees in interpreting a term that is not clearly

defined in the statute, not as a replacement for the statute or 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 memorandum accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. 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 that it involves specialized knowledge. *Id.* It is also appropriate for the AAO to then look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).<sup>1</sup> As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

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

*Id.* at 53.

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the

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

subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, supra* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

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

Thus, based on the intent of Congress in its creation of the 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 classification. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee. The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F.Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

In this matter, the petitioner initially provided only general descriptions of the beneficiary's current role as a chartering broker and proposed role as general manager for South American operations that convey little understanding of the type or extent of specialized knowledge that would be required to successfully perform

the purported job duties. For example, the beneficiary's responsibilities for negotiating freight rates and conditions, making commercial decisions regarding cargos and contracts, determining freight levels, and monitoring the economic performance of vessels would appear to be typical of any chartering broker working in the international shipping industry. At the time of filing, the petitioner simply stated that the beneficiary utilizes "specialized knowledge" and "advanced knowledge," of the company's cargo operations, vessels, and chartering processes and procedures, without providing evidence that would establish how the company's operations, processes and procedures are different from those of other companies in the industry, or any explanation as to why the beneficiary's knowledge should be considered "advanced" compared to the knowledge possessed by other similarly employed workers in the petitioner's group of companies.

Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner did not initially articulate any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's current and proposed job duties, the petitioner did not identify any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. 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). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the AAO observes that the petitioner's initial descriptions of the beneficiary's current and proposed duties, and its initial assertions regarding the beneficiary's specialized knowledge, made no mention of the "Glomaris" program upon which the petitioner rested its subsequent claims. Yet, in response to the director's request for evidence, the petitioner focused its claims regarding the beneficiary's specialized knowledge almost entirely on the beneficiary's claimed classification as a "super-user" of the Glomaris charting and operations package, and stated for the first time that he would be responsible for training Houston-based staff regarding these packages upon his transfer to the United States. The petitioner even went so far as to suggest that he was being transferred to the United States primarily to "ensure a successful technology transfer and dissemination in the United States." If the beneficiary's knowledge of "Glomaris" is actually the primary reason for his transfer to the United States, it is unclear why the petitioner would not mention such knowledge as an integral part of the duties to be performed in the United States at the time it filed the petition. 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).

Nevertheless, the AAO will consider the petitioner's claims that the beneficiary's knowledge of the Glomaris program represents "specialized knowledge," and that his knowledge can be considered "advanced" based on his purported classification as a "super-user" of the program. On appeal, counsel emphasizes that the petitioner's group developed the Glomaris program internally, thereby establishing its proprietary status, and notes that it is the only software platform in existence designed specifically for the operational management

of ocean transportation companies. However, the record does not support the petitioner's claim that knowledge of the Glomaris program alone should be considered uncommon or noteworthy, such that it could be considered "special." Although the petitioner's group of companies developed Glomaris, the petitioner has provided evidence that the program is marketed and sold to other international ocean transportation companies, and thus the ability to use the Glomaris software, by itself, cannot be considered unusual or uncommon within the industry. A chartering broker working for another international shipping company utilizing Glomaris could reasonably be expected to be familiar with the chartering and operations components of the program.

The petitioner also attempts to distinguish the beneficiary's knowledge of Glomaris as "advanced," but has failed to submit evidence to substantiate this claim. The petitioner indicates that Glomaris is "an integral part of the daily activities of all staff within the Group," a statement which suggests that all employees in the petitioner's group of companies receive training in and possess a working knowledge of the software package. If all employees within the group are trained in and utilize the program, the petitioner has not established that knowledge of Glomaris alone is "special." The petitioner suggested that the beneficiary's knowledge is "advanced" compared to his colleagues, as he has been designated as a "super-user" within his department, and received "in-depth" training "in order to assist, guide and train other and new staff in the general use of applications." As noted by the director, the petitioner was specifically instructed to submit a record detailing the manner in which the beneficiary gained his claimed specialized knowledge, including detailed information regarding its training program. If the beneficiary's knowledge was not gained through formal training, the petitioner was requested to clarify exactly when and how the knowledge was claimed during the course of the beneficiary's past employment, and how that knowledge was different from knowledge attained by other individuals in similar positions.

In response to this very specific request, counsel merely stated that training in Glomaris "is on going and is not being documented as such but is an integral part of the daily activities of all staff." Counsel went on to say that the beneficiary is a "super user," but offered no explanation from the petitioner or documentation from the company that would explain the distinction between a "super user" and a regular user, evidence that would indicate that the beneficiary has been formally given this distinction, or information regarding the specific training received by a "super-user" of Glomaris within the petitioner's group of companies. The petitioner has offered no supporting documentary evidence whatsoever to corroborate its claim that the beneficiary has received additional training in Glomaris that would qualify his knowledge as "advanced" compared to the knowledge that is possessed by every other employee of the company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

On appeal, the claim that the beneficiary possesses advanced knowledge of Glomaris is based solely upon counsel's unsupported assertion that the beneficiary is the only employee of the foreign entity who is designated as a "super user" of the Glomaris chartering and operations packages. Again, while it appears based on the petitioner's and counsel's representations that the petitioner has some formal method of distinguishing "super users" from the company's average employee, the petitioner has opted not to provide an explanation and has not supported its claim that the beneficiary's knowledge of the program is advanced.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, as discussed above, the petitioner's initial claims regarding the beneficiary's specialized knowledge made no mention of his knowledge of Glomaris, or of any responsibilities for providing training in the Glomaris program to the company's U.S.-based staff. On appeal, counsel references the beneficiary's "intimate" familiarity with the programming language and servicing of the software, yet the record contains no evidence that the beneficiary, in his role as a chartering broker, or in his proposed role as general manager, would be regularly involved in programming or servicing the software. While it appears that the beneficiary, like all employees of the company, is required to utilize Glomaris to perform his job responsibilities, the petitioner's claims that his knowledge rises to the ability to program and service the software, or that his job requires this ability or regularly involves the training of other employees, is not supported by any evidence. The petitioner has not established that the beneficiary's knowledge of the Glomaris program is "fundamental to his proposed position," as claimed by counsel on appeal.

Finally, as noted by the director, even if the petitioner had established that the beneficiary possesses knowledge that could be considered "specialized knowledge" in accordance with the statutory and regulatory definitions, the record does not establish that the beneficiary was employed in a position involving specialized knowledge for at least one year within the three years preceding the filing of the instant petition, as required by 8 C.F.R. §§ 214.2(1)(3)(iii) and (iv). The petitioner indicated that the beneficiary has been employed in his current position of chartering broker since August 2003, and stated that he was designated as a "super user" of Glomaris immediately upon being hired by the company. However, the beneficiary's resume, and the evidence submitted in support of the petition, indicates that the beneficiary spent his first two years with the foreign company as a trainee or apprentice which resulted his certification as a skilled "clerical worker specializing in forwarding and shipping," in accordance with Danish educational and training guidelines. It appears that the beneficiary assumed his current position as a chartering broker in August 2005, only three months prior to the filing of the instant petition. 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. at 591-92.

The petitioner failed to mention that the beneficiary was a participant in its apprenticeship program, much less provide a description of the program, which appears to have involved a significant amount of formal classroom training outside of the petitioner's organization. Since the record does not contain a description of the beneficiary's duties for the year preceding the filing of the petition, it cannot be concluded that he was employed in a qualifying capacity for the requisite time period. 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.

As discussed above, beneficiaries of L-1B petitions should be more than merely skilled, but rather must be shown to carry out key processes or functions. In addition, the petitioner should establish that the

beneficiary's knowledge meets the plain meaning of "special." See 8 C.F.R. § 214.2(l)(1)(ii)(D) (defining "specialized knowledge" as "special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests"). "Special" is defined as "surpassing the usual; distinct among others of a kind; peculiar to a specific person or thing." *Webster's II New College Dictionary* 2001, Houghton Mifflin. See also *Webster's Third New International Dictionary*, 2001 (defining special as "distinguished by some unusual quality; uncommon; noteworthy.") In this case, the petitioner has only established that the beneficiary is a trained employee who fills a position the petitioner considers important. However, the beneficiary was employed as an apprentice or trainee for the majority of the time he was employed by the foreign entity. While it is the beneficiary's actual job duties and not his job title that determine whether he possesses specialized knowledge, it is evident that as an apprentice or trainee, the beneficiary has not played an advanced or critical role within the foreign entity's operations. Rather, it is likely that the beneficiary spent the majority of his time abroad working under the guidance and direction of more experienced employees, and learning the procedures and functional knowledge required to perform the duties of a chartering broker within the international ocean transportation industry. The petitioner has not established that the beneficiary has performed unusual duties or that he is employed primarily to carry out a key process or function. See *Matter of Penner*, 18 I&N Dec. at 52.

The record does not distinguish the beneficiary's knowledge as different or more advanced than the knowledge possessed by other similarly employed chartering and operations specialists within the petitioner's industry. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. at 53.

Considering that the beneficiary completed a two-year vocational program with the foreign entity, it appears that the foreign entity offers a formal post-secondary school apprenticeship program in the beneficiary's specialty, and that the training the beneficiary completed was no different from that completed by many other similarly employed by the foreign entity who completed the same program. The petitioner offered no information regarding other employees working for the foreign company, such that the director or the AAO could make a meaningful comparison between the beneficiary's claimed "advanced knowledge" and the knowledge possessed by other workers within the petitioner's organization. Although knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products and processes. The lack of 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 highly skilled and experienced employee, the petitioner has not established that the beneficiary rises to the level of a specialized knowledge or "key" employee, as contemplated by the statute. See *Matter of Penner*, 18 I&N Dec. at 53.

Finally, the AAO will address counsel's claim that the beneficiary qualifies for classification as a specialized knowledge employee pursuant to characteristics outlined in the 1994 Puleo memo. While factors outlined in the Puleo memorandum may be considered, 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(l)(1)(ii)(D). As

discussed above, the petitioner has not established that the beneficiary's knowledge rises to the level of specialized knowledge contemplated by the regulations.

Regardless, counsel's claims regarding the beneficiary's qualifications under the Puleo memo were not supported by evidence. As stated in the 1994 Puleo memorandum:

[T]he mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing *through the submission of probative evidence that the alien's knowledge is uncommon noteworthy, or distinguished by some unusual quality* and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company *must be supported by evidence describing and setting apart that knowledge from the elementary of basic knowledge possessed by others*. It is the weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge.

(Emphasis added.) Puleo memorandum, *supra*.

The AAO notes that the only supporting documentary evidence submitted in support of this petition was general information from the petitioner's corporate web site. Upon review, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any evidence that would allow the AAO to evaluate the claim.

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 possesses specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

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

**ORDER:** The appeal is dismissed.