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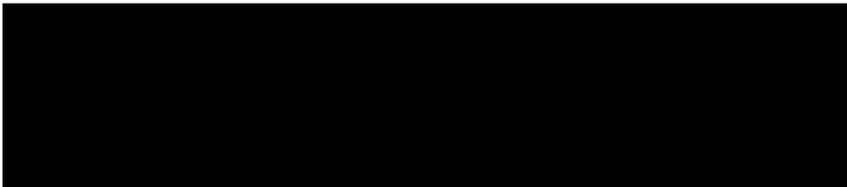
FILE: LIN 06 003 52015 Office: NEBRASKA SERVICE CENTER Date: **AUG 06 2007**

IN RE: Petitioner:
Beneficiary:



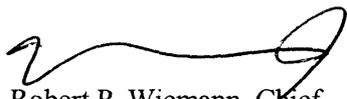
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Nebraska 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 in the position of computer consultant 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 claims that it is an affiliate of the beneficiary's foreign employer, Kanbay Software (India) Pvt. Ltd., located in India. The petitioner states that it is engaged in computer consulting. The petitioner seeks to employ the beneficiary in the position of "computer consultant" for a three-year period and asserts that the beneficiary is among a "handful" of its employees that possess special knowledge of its "proprietary KGM processes" and consumer lending systems.¹

The director denied the petition on December 16, 2005, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

Counsel for the petitioner subsequently filed an appeal on January 17, 2006. On appeal, counsel cites to a letter written by a professor that was submitted on appeal as an expert opinion as to the beneficiary's specialized knowledge. In addition, counsel states that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in two legacy Immigration and Naturalization Service (INS) memoranda. See Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo"). Counsel submits a brief and additional documentation 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) states that an individual petition filed on Form I-129 shall be accompanied by:

¹ Although the petitioner asserts that the beneficiary is among a "handful" of its employees possessing specialized knowledge, CIS records reveal that the petitioner has filed more than 1,100 L-1B petitions in the previous six years. It is also noted that the petitioner has been approved under a Blanket L petition, allowing the petitioner to transfer L-1B employees to a qualifying organization in the United States without filing an individual petition with USCIS. See 8 CFR 214.2(l)(5). Accordingly, the number of L-1B employees may be substantially higher than the 1,100 petitions reflected in USCIS records.

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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 petitioner filed the instant nonimmigrant petition on October 5, 2005, indicating that the beneficiary would be employed in the United States as a computer consultant. In a support letter dated October 4, 2005, the petitioner stated that it wishes to transfer the beneficiary to the United States to "maintain a regular rotational program for key personnel with specialized knowledge." In the letter, the petitioner described the specialized knowledge obtained by the beneficiary as the following:

As explained in Section III, below, [the beneficiary] has acquired specialized knowledge acquired through:

1. Training received on the internal procedures, methods and proprietary product lines of [the petitioner].
2. Training received through customization of such procedures, methods and proprietary product lines for [the petitioner's] clients; and
3. Training received through working with the products, processes, tools and methodologies related to financial products used by [the petitioner's] financial clients.

The specialized knowledge thus acquired by [the petitioner's] key employees, over an extended period of time, cannot be acquired within a reasonable time by a person who may have otherwise strong academic background and general knowledge or experience of the industry or products used by such industry.

[The beneficiary's] transfer to the United States is to assist [the petitioner's] existing client in customization and maintenance of its financial products and related methodologies and procedures to meet the growing requirements of its customers in the United States and other countries; and to stay competitive in the changing global economy. Since [the beneficiary] began his employment with [the foreign company], in December 2003, [the beneficiary] has gained in-depth knowledge of the Company's proprietary line of software enhancing product known as KGM processes as well as the client's Software Development methodologies which has value added features. KGM processes technology is proprietary to [the petitioner] and he has gained an advanced level of expertise with respect to the implementation of the KGM processes. As the software is proprietary, it is distinguished by its unusual quality and is not generally known by practitioners in the field. Similarly, [the beneficiary's] advanced level of expertise with respect to the implementation of the KGM processes and services related to financial products sets [the beneficiary] apart from other employees with the company. This advanced level of expertise includes development of applications using Windows XP/2000/98/NT, Unix operating system; Web (Client/Server, N-Tier), Standalone environment; DB2, Sybase, oracle, SQL Service database; Java, HTML, XML, JavaScript, DHTML, XML, XSL, Servlets, EJB, JSP, JDBC, Websphere 5.0, Tomcat 3.1, Tomcat 4.0, Weblogic 6.1, MTS internet tools; Java, C, C++, Javascript, SML, SXL languages and IDE's: Websphere Studio Application Developer, IBM Visual Age for Java, Jbuilder 6.0, Textpad, JCreator (Professional), Microsoft Visual InterDev, Messaging: MQ-Series, Build Tools: Jakarta Any 1.4, Version Control: Changeman, MKS Source Integrity, Visual Source Safe 5.0, StarTeam 5, StarTeam 5.2.

The petitioner described the duties to be performed by the beneficiary in the United States as the following:

This position requires specialized knowledge of [the petitioner's] proprietary product line and, in particular, specialized knowledge of the KGM processes, described below, as well as expertise in financial products, processes and methodologies, such as those of [the U.S. client's] consumer lending processing system. This specialized knowledge would

allow this position to support most aspects of the consumer lending process including development of applications, testing and enhancements.

Specifically, [the petitioner] is helping the client to build internal efficiency tools for the following projects:

- 1) Consumer Lending Operation Support: Full life cycle projects; Major enhancements to the existing functionality; preventive maintenance for the applications developed by the client team; maintenance of Household Finance (HFC USA and Canada) Web applications; maintenance of Beneficial Inc. web applications; Maintenance of Union Plus Loan Originations web application; HMDA Migration and testing; and, major enhancements to Lead Portal Providers.
- 2) Household and Beneficial Lending Sites: Release base project approach; providing the enhancements and migration to the new ES architecture; designing the additional sites facilities and implementing the same.
- 3) StarWars: Full Life Cycle Project execution; Developing a single Consumer and Mortgage originations site for U.S. based customers.
- 4) Sales Finance: Full Life Cycle Project execution; consumer lending seeks to create a stand-alone, online Sales Finance Merchant Application; features contract (web forms) that will enable the Consumer Lending Sales Finance merchants to enter customer information; ability to receive instant notification of system generated approvals or turndowns; enable the merchants to launch a pre-populated and manually completed contract; print copies of the loan contract from the internally build web site; additional features like Offline fulfillment, turndown/approval criteria, and merchant reporting.

The petitioner's letter of support also described its proprietary KGM process as follows:

[The petitioner] transfers only some specialized knowledge employees to the U.S. under its business model, which is called the 3-Tier delivery model.

The 3-Tier delivery model describes how [the petitioner] works with its clients – onsite, offsite, and offshore. As the project evolves, [the petitioner's] associates from each tier will be working at different stages of the project. The blend of tiers is dynamic and scalable so the number of people working at each level varies, according to the client's project's requirements. This hybrid approach provides:

- The security and responsiveness of a face-to-face, onsite team
- The flexibility of a regional team of experts when it is required
- The economic leverage of a skilled offshore team dedicated into the client's organization.

The 3-Tier model is part of [the petitioner's] GlobalLink methodology (KGM), an integrated set of ISO 9001 and CMM-compliant processes and provide the framework for successful client projects regardless of geographic location. GlobalLink has proven to be an effective way to manage business technology projects and – perhaps more importantly – an easy method for integrating multi-state development into the client's organization.

The petitioner submitted the beneficiary's resume; educational certificates; one certificate of completion of the petitioner's "on-the job training in Development and Enhancement of CCS eCare System for HSBC eSolutions," from December 2003 to February 2004; and, a certificate of completion of the petitioner's "on-the-job training in Execution Services for HSBC eSolutions," from December 10, 2003 to December 13, 2003. In addition, the petitioner submitted an organizational chart of the team structure in the United States. The chart indicates that the onsite team in the United States will include a "deliver manager" who supervises the KeC Project Manager, who supervises a Team Lead, who supervises three team members, including the beneficiary.

The director issued a request for additional evidence on October 6, 2005, stating that the record does not show that the beneficiary possesses specialized knowledge. The director requested: (1) evidence verifying that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by others in the beneficiary's field or in the industry, or evidence that the beneficiary's advanced level of knowledge of the company's processes and procedures distinguishes him from those with elementary or basic knowledge; (2) evidence to establish that the beneficiary's duties abroad and the beneficiary's proposed duties in the United States require a person with specialized knowledge; and, (3) an explanation as to the manner in which the beneficiary has gained his specialized knowledge, including the total length of any classroom or on-the-job training courses completed and details of the course content

Counsel for the petitioner responded in a letter dated December 12, 2005. Counsel asserted that the beneficiary's knowledge of the petitioner's unique KGM processes sets the beneficiary apart from other individuals in his field. Counsel stated that all of the petitioner's employees have obtained the knowledge of the petitioner's KGM process which was developed by the petitioner "for its own employees and is not readily available to everyone in the IT/Computer fields." Counsel further stated that all of the petitioner's employees are required "to participate in the KGM process training."

Counsel contends that the current standard for the interpretation of specialized knowledge is outlined in two legacy Immigration and Naturalization Service (INS) memoranda. See Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo"). Counsel stated that the knowledge and expertise of the KGM process is "valuable to employer's competitiveness in the market place." Counsel also stated that the knowledge of the KGM process "cannot be easily transferred or taught to another individual in a short time." Counsel further stated that the beneficiary participated in the petitioner's in-house training course of the KGM process "which is mandatory for all [of the petitioner's] employees." Counsel explained that the beneficiary has practical experience with the petitioner and the United States client that provided him with knowledge that is

not generally known by other individuals in his field. In addition, counsel stated that the beneficiary has extensive practical experience with the execution services framework.

The petitioner also submitted an affidavit from the beneficiary's immediate supervisor outlining the beneficiary's practical experience and training with the petitioning company. The affidavit confirms that the beneficiary has obtained training in the KGM process, and practical experience with the execution services framework, and the systems applications of the United States client. The affidavit also indicated that the beneficiary received approximately 208 hours of training in "Execution Services," "KGM," and "MQSeries and JMS." It appears that the beneficiary received 8 hours of training in the KGM process; according to counsel, all of the petitioner's associates receive the same training.

The director denied the petition on December 16, 2005, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge. The director noted that the beneficiary's knowledge of the petitioner's proprietary products, without any other documentation, is not sufficient to establish that the beneficiary possesses specialized knowledge. The director also noted that the beneficiary's duties do not appear to be significantly different from those of any other computer consultants employed by the petitioner, or different from the duties performed by other consultants in the computer industry. The director further stated that the petitioner did not submit the content of the training provided to the beneficiary, and it appears that the courses were "relatively short on-the-job professional development training" which may be offered to several of the petitioner's employees. The director stated that the beneficiary's professional experience with the petitioner, alone, is not sufficient to establish specialized knowledge.

On appeal, counsel cites to a letter written by a professor that was submitted on appeal as an expert opinion as to the beneficiary's specialized knowledge. In addition, counsel states that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in two legacy Immigration and Naturalization Service (INS) memoranda. See Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo").

On review, the petitioner has not demonstrated that the beneficiary would be employed in the United States organization in a specialized knowledge capacity.

First, the AAO notes that the two memoranda cited by counsel, the Puleo Memo and the Ohata Memo, are not the "current standard" for the interpretation of specialized knowledge. Instead, the statute, regulation, and CIS precedent decisions comprise the controlling law and provide the legal definition of specialized knowledge. See section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D); see also *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982). CIS and legacy Immigration and Naturalization Service have issued many memoranda with varying interpretations of specialized knowledge during the 37 year history of the L-1 visa classification. CIS memoranda merely articulate internal guidelines for INS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v.*

Trominski, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

Although the petitioner repeatedly asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated any basis to support this claim. The petitioner has provided a description of the beneficiary's proposed responsibilities as a computer consultant, but the description does not mention the application of any specialized or advanced body of knowledge that would distinguish the beneficiary's role from that of other computer consultants employed by the petitioner. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to computer consultancy positions within the U.S. company are different from those applied for other companies providing computer consulting for the financial service industry. In addition, the petitioner has not explained how the knowledge of the petitioner's computer systems amount to specialized knowledge, particularly since the systems are built upon C, C++, Java, XML, and several computer languages, all of which are commonly used by computer programmers and system administrators in the industry. While individual companies will develop a computer system and methodologies tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

The petitioner has repeatedly asserted that the beneficiary possesses knowledge of the petitioner's proprietary KGM process and thus the beneficiary possesses specialized knowledge. However, according to the record, it appears that the beneficiary only received 8 hours of training in the KGM process, and this training is mandatory for all of the foreign company's employees. In addition, in reviewing the KGM process, as discussed in the petitioner's support letter dated October 4, 2005, it appears that the KGM process is not a proprietary software system but instead a business model for managing the petitioner's projects. Thus, the petitioner's proprietary process appears to be a management and administrative process rather than a proprietary software or system utilized by the beneficiary to perform the duties required of the United States client.

Additionally, according to the beneficiary's resume, it appears that once the beneficiary commenced his employment with the foreign company, he immediately began working as a computer consultant. The petitioner did not indicate that the beneficiary was required to complete a specific training course for the petitioner's processes and procedures prior to commencing his employment. This fact provides further evidence that the petitioner does not utilize a proprietary system that greatly differs from the systems used

by computer consultants in the information technology industry since the beneficiary immediately began working with the petitioner's products upon commencement of his employment with the petitioner. Thus, the AAO cannot conclude that the beneficiary has an "advanced knowledge" of the petitioner's proprietary software over and above from other employees of the petitioner or other employees in the computer industry.

In response to the director's request for evidence, the petitioner indicated that the beneficiary possessed extensive practical experience and specialized knowledge in the execution services framework for the U.S. client. However, the petitioner did not explain what the execution services framework consisted of, and did not mention this system in the original petition. It appears that the initial description of the beneficiary's specialized knowledge focused on his knowledge of the KGM process, while the second iteration of the beneficiary's specialized knowledge focuses on advanced knowledge of the KGM process and the execution services framework.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change the beneficiary's specialized knowledge. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the beneficiary's specialized knowledge, but rather added new knowledge obtained by the beneficiary. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. The petitioner submitted training certificates issued by the petitioner to the beneficiary, however, the petitioner did not explain how many employees in the company receive this training. Without specific information of the training courses completed by the beneficiary at the foreign company, the AAO cannot determine if this training provided the beneficiary with an advanced knowledge or if it is reasonable to believe that a computer consultant with a background in related technologies may learn the petitioning company's specific project methodologies and processes with minimal training.

Further, the petitioner did not submit any documentation to evidence that the beneficiary received additional training that was not provided to other computer consultants employed by the foreign company. The petitioner did note that the beneficiary has gained "in depth knowledge and expertise in the [petitioner's] proprietary KGM processes, and an understanding of the processes of HSBC consumer lending systems," which "only a handful of our employees possess this knowledge." However, the petitioner did not present any corroborating evidence to support this claim. In addition, the petitioning company states that it has 4700 employees and it is not clear how only a "handful" of employees have the knowledge of the KGM process when the petitioner indicated that all of the petitioner's employees must complete a training course in the KGM process. Finally, although the beneficiary worked with the U.S. client on the same project when he was employed by the foreign company, it does not evidence that his

experience and knowledge of the client's requirements are "truly specialized." Knowledge related to a specific clients' project cannot be considered "specialized knowledge" specific to the petitioning company. The beneficiary's familiarity with the U.S. clients' project requirements is undoubtedly valuable to the petitioner, but this knowledge alone is insufficient to establish employment in a specialized knowledge capacity. If the AAO were to follow the petitioner's logic, any computer consultant who had worked on a client project team within the petitioner's organization would be considered to possess "specialized knowledge."

The petitioner did not submit evidence describing in detail the petitioner's proprietary products and how they differ from other information technology products utilized by the financial services industry. In addition, there is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that his level of knowledge is comparatively "advanced." Although there is no requirement that the beneficiary must develop the internal methodologies and processes, this may be evidence of an advanced knowledge of the petitioner's internal processes that will demonstrate that the beneficiary possesses a specialized knowledge. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to computer consultant positions within the U.S. company are different from those applied for other companies providing software development and consulting services to the financial services industry. Moreover, there is no evidence on record to suggest that the computer programming processes pertaining to the financial services industry, specifically, are different from those applied for any computer programming position. While individual companies will develop a computer system tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).² As stated by the Commissioner

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 remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO

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

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

Id. at 53.

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

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

supports its use of *Matter of Penner*, as well in offering guidance interpreting “specialized knowledge.” Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

1756, Inc., 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

The beneficiary’s job description does not distinguish his knowledge as more advanced or distinct among other computer consultants employed by the foreign or U.S. entities or by other unrelated companies. 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).³ 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.

Further, the Puleo memo cited by counsel allows CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” *Memo, Supra*. A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the

³ Again, Congress’ 1990 amendments to the Act did not specifically overrule *1756, Inc.* nor any other administrative precedent decision, nor did the 1990 amendments otherwise mandate a less restrictive interpretation of the term “specialized knowledge.” The House Report, which accompanied the 1990 amendments, stated:

One area within the L visa that requires more specificity relates to the term “specialized knowledge.” Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company.

knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary’s job duties.

The record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other computer consultants within the petitioning company or within the information technology industry. As noted above, the fact that the beneficiary immediately began working on assignments with the petitioning company utilizing its financial services products, it appears that any individual with experience in the information technology industry may work with the petitioner’s products and learn its specific requirements fairly quickly. Thus, it appears that the petitioner’s products are based on information technology systems that are common in the industry. In addition, the petitioner did not indicate a training program required of its computer consultants and thus it appears any individual with an information technology background may fill the position of computer consultant. Since the petitioner did not indicate a specific training program or the minimum requirements to fill the position of computer consultant, the petitioner failed to demonstrate that the beneficiary’s knowledge is more than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52. If the AAO were to follow the petitioner’s reasoning, then any employee who has worked with the petitioning company possesses specialized knowledge. However, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee status. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

Counsel’s reliance on the Puleo memorandum is misplaced. It is noted that the memoranda were intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Therefore, by itself, counsel’s assertion that the beneficiary’s qualifications are analogous to the examples outlined in the memoranda is insufficient to establish the beneficiary’s qualification for classification as a specialized knowledge professional. While the factors discussed in the memorandum may be considered, the regulations specifically require that the beneficiary possess an “advanced level of knowledge” of the organization’s processes and procedures, or a “special knowledge” of the petitioner’s product, service, research, equipment, techniques or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As discussed above, the petitioner has not established that the beneficiary’s knowledge rises to the level of specialized knowledge contemplated by the regulations.

In sum, the beneficiary’s duties and technical skills demonstrate knowledge that is common among computer systems professional working in the beneficiary’s specialty in the information technology field. The petitioner has failed to demonstrate that the beneficiary’s training, work experience, or knowledge of the company’s processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large information technology consulting companies. The AAO does not dispute the fact that the beneficiary’s knowledge has allowed him to successfully perform his job duties for the foreign entity. However, the successful completion of one’s job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a “key personnel,” nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to

establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

On appeal, counsel submitted a letter from a professor regarding the beneficiary's specialized knowledge. Counsel did not provide sufficient evidence to establish that the author of the opinion letter should be considered an expert. Furthermore, the petitioner did not disclose which specific documents the "expert" reviewed in rendering his opinion. Therefore, the AAO does not have the information needed in order to evaluate what objective evidence the expert based his opinion on. The author also stated that the beneficiary possesses unique knowledge of the company's products and procedures "simply because [the petitioner's] software processes are only taught and presented to company employees." As discussed above, the petitioner failed to establish the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other computer consultants employed by the petitioner. The opinion letter is not consistent with the petitioner's claim that the beneficiary possesses specialized knowledge of its methodologies, processes and procedures. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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

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

ORDER: The appeal is dismissed.