

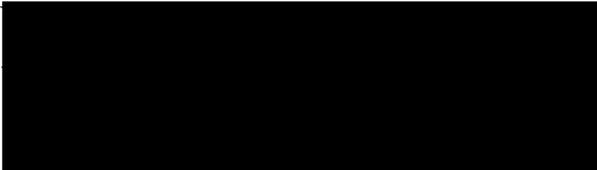
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FILE: EAC 02 080 54041 Office: VERMONT SERVICE CENTER

Date: DEC 21 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, Vermont 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 extend the beneficiary's employment 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 a branch of the beneficiary's foreign employer, Tata Consultancy Services, located in Mumbai, India, and is operating in the United States as an information technology consulting firm. The beneficiary was previously granted L-1B classification under the petitioner's blanket L petition, and the petitioner now seeks to extend the beneficiary's employment as a senior programmer for three additional years.

The director denied the petition on July 10, 2002, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, or that he has been or would be employed in a position requiring specialized knowledge.

On appeal, counsel for the petitioner contends that the director improperly applied the applicable statute and regulations to the facts of the case, and contradicted prior legacy Immigration and Naturalization Service (INS) guidance for interpreting the statutory definition of specialized knowledge, as provided in a 1994 memorandum. Counsel asserts that the beneficiary's knowledge of the petitioner's SEI-CMM Level 5 assessed software development and maintenance process is advanced, as it is "different from that generally found in the software sector in the United States and internationally." Counsel claims that such an interpretation of specialized knowledge is consistent with the statute's implementing regulations, legislative history and previous INS guidance. 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) states that an individual petition filed on Form I-129 shall be accompanied by:

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

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

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (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 nonimmigrant visa petition on January 4, 2002. In a letter dated December 27, 2001, the petitioner outlined the beneficiary's proposed responsibilities as a senior programmer as follows:

- Work with Onsite and Offsite resources to customize [the petitioner's] internally developed, standard, SEI-CMM Assessed (Level 5) software development and maintenance process to meet project operational requirements.
- Conduct Software Configuration Management activities as per SCM Plan established by Project Leader.
- Perform changes to all configurable items as per [the petitioner's] Change Control Procedure, which is established by the Project Leader.
- Ensure that all designs, development, testing, implementation, etc. activities are done as per guidelines established in [the petitioner's] Quality Management System.
- Ensure that all work done (requirements gathering, specifications development, coding, testing, and debugging, etc.) meets project operational process requirements and Software Project Plan as established by the Project Leader using Project Planning Guidelines, Project Plan Template, Software Development Life Cycle Models document, Guidelines for Software Estimation, quality manual, etc., which are all available via TCS' PAL, BAL, IPMS, etc. web-based systems.
- Participate in Final Inspections, which are conducted before software work items are released to client.
- Prepare specifications for offshore development.
- Upload specifications for offshore development.
- Provide technical guidance to offshore resources as required.

- Participate in Defects Prevention Activities: Peer Reviews, Causal Analyses Sessions, Inspections, etc., as per IPMS, DP Checklist, guidelines for software product quality, project plan template, etc., of work product produced onsite and offshore.
- Participate in Quantitative Process Management as per QPM established by the Project Leader.
- Participate in fortnightly Defects Prevention meetings, as well as on a need basis as required.
- As may be required, participate with team to develop software process improvements for areas of concern.

With respect to the beneficiary's qualifications, the petitioner further provided that as a prerequisite to employment as an senior programmer, the petitioner requires a baccalaureate degree in computer science or a relevant engineering discipline. An attached resume indicated that the beneficiary possessed a Master's Degree in Engineering. During the beneficiary's employment with the foreign company, which began in March 1998, he had been involved in projects utilizing skills such as MS-SQL Server v6.5, 7.0, Oracle 8i, Visual Basic, Windows 95 and NT, MS-DOS 6.22, and SQL Navigator. Additionally, the petitioner indicated that the beneficiary participated in the foreign entity's in-house training program, during which he was exposed to the Software Engineering Institute's (SEI) Capability Maturity Model for Software (CMM) software development process used by several of the foreign company's offshore development centers.

The petitioner explained that the foreign entity's offshore development centers are among only 61 organizations worldwide to have achieved SEI-CMM Level 5 Assessment for their software development and maintenance processes. The petitioner emphasized that the company's internally-developed SEI-CMM level 5 process is "neither widely known nor is it commonly utilized in the software industry including the United States." The petitioner stated that since completing the petitioner's Internal Training Program, [the beneficiary] has been utilized in a specialized knowledge capacity that enhanced the company's image and competitiveness, while gaining "highly specialized, practical knowledge of" the SEI-CMM Level 5 process.

The petitioner further explained the beneficiary's qualifications as follows:

While individuals with industry experience developing and maintaining a variety of software application systems are common in the industry, the fact is that the beneficiary's duties are different precisely because they are not executed in a random fashion, but are performed within the framework of the petitioner's standard SEI-MM Level 5 assessed software development and maintenance process as it is customized to meet the requirements of this particular assignment – a process, as we have said, is not commonly utilized in the software industry. All work performed by this beneficiary must be performed within the strict and highly structured guidelines of [the petitioner's] key process areas (KPAs) of Requirements Management, Software Project Planning, Software Project Assurance, Inter-group Coordination, Defects Prevention, Software Quality Management, Process Focus, and Process Definition procedures. Every member of the team must understand these KPAs as they apply to this particular project in order to successfully complete the assignment within established parameters such as time, cost, quality, etc – and imparting such knowledge to a person who is not familiar with the petitioner's software development and maintenance procedures would unquestionably entail a significant economic inconvenience to the firm.

The director issued a request for additional evidence on February 11, 2002, noting that the record did not sufficiently establish that the beneficiary possesses specialized knowledge. The director requested that the petitioner submit the following: (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; (2) 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; (3) evidence that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace, and that he is qualified to contribute to the petitioner's knowledge of foreign operating conditions; (4) confirmation that the beneficiary has been utilized abroad on significant assignments that have enhanced the employer's productivity, competitiveness, image, or financial position, and that the knowledge possessed by the beneficiary can only be gained through prior experience with the foreign employer; (5) verification that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; and (6) evidence that the petitioning organization would experience a significant interruption in business in order to train a replacement employee for the beneficiary.

The petitioner responded in a letter dated April 29, 2002, stating that the beneficiary has an advanced level of knowledge of the company's processes and procedures relating to quality assurance standards. The petitioner stated that the beneficiary's knowledge is different from others in his field as a result of his training in the foreign entity's processes and procedures, which are consistent with SEI-CMM Level 5 quality assurance methodologies. The petitioner explained that a level 5 assessment of the SEI-CMM "is the highest and most sought after quality assurance standard in the information technology industry worldwide, and [the petitioner] is one of very few firms that have achieved it." The petitioner further explained that the beneficiary is one of fewer than half of the foreign company's over 19,000 information technology professionals to have received training in the following "Key Process Areas" of the company's SEI-CMM Level 5 software development and maintenance process:

- Defects Prevention (Software Reviews, Inspections, and Walkthroughs)
- Peer Reviews
- Software Quality Management Procedures
- Software Project Planning and Oversight
- Requirements Management
- Software Product Engineering
- Software Metrics and Measurement
- Software Maintenance Management
- Software Configuration Management
- Software Testing
- Software Process Improvement and Assessment
- Software Estimation
- Software Quality Assurance
- Inter-group Coordination
- Quantitative Process Management

The petitioner noted that the beneficiary had also received training in the petitioner's software development and maintenance tools, including IPMS, PAL and BAL, which "facilitate customization implementation and management of the company's SEI-CMM Level 5 software development and maintenance."

The petitioner further explained the beneficiary's qualifications as follows:

[The beneficiary's] knowledge is different from that ordinarily encountered in the field by virtue of the fact that he has been specifically trained in the processes and procedures that [the petitioner] wishes to be employed in each of its projects, consistent with its SEI-CMM Level 5 quality assurance methodologies. In his tenure with [the petitioning organization], [the beneficiary] has more than four years of advanced, highly specialized practical knowledge of [the petitioner's] SEI-CMM Level 5 software development and maintenance process as it is customized to meet the quality and operational requirements of software assignments across a variety of business application and technology domains for [the petitioner's] clients in the international marketplace. Having worked on his current assignment for the past two years, [the beneficiary] has also acquired advanced specialized knowledge of [the petitioner's] SEI-CMM Level 5 software development and maintenance process as it is customized to meet the quality and operational requirements of this particular project for [the petitioner's client]. He has also acquired extensive knowledge of the programming, networking, operating systems, database, batch processing, online transaction processing, and interactive environments within which the client's Contact Management system is being developed. [The beneficiary] also possesses considerable knowledge of the functional and technical specifications of this system. This amalgamation of knowledge that [the beneficiary] has acquired during his four-year tenure with [the petitioner] constitutes a body of advanced, highly specialized knowledge and skills that is not readily transferable to another individual. It is our contention that [the beneficiary's] combination of knowledge, experience, and skills is advanced in relation to the vast majority of our project staff, particularly with regard to his training in our internal quality assurance framework. It is at this level that [the petitioner] believes it is entitled to transfer [the beneficiary] to the United States as a specialized knowledge professional.

The petitioner provided a more detailed description of the beneficiary's duties, and emphasized that he is "required to perform these duties consistent with [the petitioner's] own SEI-CMM quality standards and he is expected to ensure that the project conforms to those quality guidelines." The petitioner stated that "there are certainly individuals also assigned to the project who do not have [the beneficiary's] level of experience with [the petitioning company], and who are not as specialized in their knowledge level with [the petitioner's] processes and procedures." The petitioner stated that the beneficiary is assigned "a high level of responsibility, which differs from that of a typical Information Technology Analyst." The petitioner identified the beneficiary as "senior level personnel" whose training, experience and responsibilities "demonstrate that he does indeed possess advanced and specialized knowledge."

In addition, the petitioner asserted that the beneficiary meets the criteria for specialized knowledge set forth in a 1994 legacy INS memorandum in that he possesses (1) knowledge valuable for the employer's competitiveness; (2) unusual knowledge of foreign operating conditions; (3) experience with significant assignments abroad that were beneficial to the employer; (4) knowledge that can only be gained with the employer or which can not be easily transferred; and (5) knowledge of a particular process or product this is not generally known in the United States. See Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991) ("Puleo Memo"). The petitioner noted that the beneficiary has been utilized as a "key employee" on several assignments and has worked on "detailed consulting projects involving data analysis, migration, technical design, programming, testing, implementation, and documentation." The petitioner stated that the beneficiary's general knowledge of computer systems design and development, combined with his

specialized training in the petitioner's internal quality assurance practices and procedures and his experience utilizing these skills in significant project assignments, make him essential to the firm.

The director denied the petition on July 10, 2002, concluding the record did not establish that the beneficiary possesses specialized knowledge or that the position offered to the beneficiary requires the services of an individual possessing specialized knowledge. Upon reviewing the detailed description of the beneficiary's job responsibilities, the director determined that the job duties are not significantly different from those of other senior programmers in computer consulting firms, and do not "warrant the expertise of someone possessing truly specialized knowledge." The director noted that the petitioner's explanation of the beneficiary's duties seemed to merely paraphrase the definition of specialized knowledge. The director also concluded that the petitioner had failed to document how the processes and procedures of the petitioning organization, specifically the SEI-CMM Level 5 quality assurance methodologies, are significantly different from the methods generally used in any technology consulting company, or how an understanding of the processes constitutes specialized knowledge.

The director further determined that the petitioner had failed to document how the beneficiary's knowledge of the processes and procedures of the petitioning organization is advanced or substantially different from the knowledge possessed by other applications software analysts employed by the petitioner. Finally, the director remarked that the petitioner did not sufficiently demonstrate that the beneficiary's knowledge is complex and not generally known by others.

On appeal, counsel asserts that the director's denial of the petition contradicts prior guidance for interpreting the statutory definition of specialized knowledge. First, counsel claims that the legislative history clearly indicates that the specialized knowledge category was not to be restricted to those rare employees with unusual knowledge of an organization's exclusive processes and techniques. Rather, counsel contends that the intracompany transferee visa classification was intended to assist foreign companies that were locating to the United States, and would experience difficulty hiring personnel familiar with the practices of the company.

Additionally, counsel asserts that the beneficiary's knowledge of the petitioner's SEI-CMM Level 5 assessed software development and maintenance process is advanced, as this knowledge is different from that generally found in the software sector in the United States and worldwide. In support of this assertion, counsel notes that the petitioning organization has fifteen offshore development centers that have been assessed at SEI-CMM Level 5. Level 5, the highest rating, represents an organization whose processes are optimized, while a Level 1 rating represents processes that are random. According to counsel, "the SEI-CMM is the most sought after assessment of an organization's software quality processes and capabilities." Therefore, although the processes used by petitioner are neither exclusive nor proprietary, counsel contends that the Level 5 rating establishes that the petitioner "utilizes a software development and maintenance process that is not commonly known or utilized in the software industry." Counsel asserts that the majority of U.S.-based organizations conducting and reporting CMM assessments to the SEI are only at Level 2 of the CMM scale.

Counsel further states that since the petitioner has established that it utilizes a sophisticated process "virtually unknown" in the software development and maintenance sector in the United States, it is reasonable to assume that anyone possessing knowledge of such a process intrinsically possesses advanced knowledge. Counsel acknowledges that the computer hardware and software systems used by the beneficiary on

assignments are comparatively common in the industry, yet claims that another individual with this knowledge would still need significant training in utilizing the petitioner's software process before competently performing the duties required for the beneficiary's position. Counsel asserts that it is the beneficiary's combination of general and company-specific knowledge that constitutes specialized knowledge, which is not readily transferable to another individual.

Counsel also compares the present case to the facts of a hypothetical case outlined in the above-referenced Puleo memorandum. Counsel claims that, in the present case, the beneficiary's knowledge is consistent with that of the beneficiary identified in the memorandum, as he possesses a combination of general knowledge and knowledge of the company's internal procedures, which renders him essential to the organization. Therefore, counsel asserts that the beneficiary should be deemed to possess specialized knowledge.

On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that he would be employed in the United States organization in a specialized knowledge capacity. In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(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 adequately described the position of senior programmer and the tasks that this position entails, the petitioner has not documented the beneficiary's claimed specialized knowledge. Both counsel and the petitioner repeatedly assert throughout the record that the beneficiary participated in the foreign entity's in-house training program, which provided specialized knowledge of its SEI-CMM Level 5 software development and maintenance process. However, the record is devoid of documentation, such as a course certification, training records, or a confirmation from a corporate director, that the beneficiary received the claimed SEI-CMM training or that the beneficiary is familiar with the petitioner's internally developed SEI-CMM process. This evidence is particularly relevant as counsel and the petitioner base their claims of the beneficiary's specialized knowledge on his completion of training involving the SEI-CMM Level 5 process and its application to the beneficiary's work both abroad and in the United States. Absent documentary evidence demonstrating the beneficiary's SEI-CMM Level 5 process training, the petitioner has not substantiated its claim that the beneficiary possesses knowledge beyond the ordinary knowledge of a skilled programmer. 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)).

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the

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

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

Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

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 senior programmers employed by the foreign or U.S. entities or by other unrelated companies in the petitioner's industry. 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.

Further, the Puleo memo cited by counsel allows USCIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Puleo memorandum, *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, USCIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires an analysis of the knowledge possessed by the United States labor market, but, as noted by counsel, does not consider whether workers are available in the United States to perform the beneficiary's job duties.

As noted above, the evidence of record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other employees within the petitioner's group. The petitioner stated in its response to the director's request for evidence that "[the beneficiary's] knowledge is different from that ordinarily encountered in the field by virtue of the fact that he has been specifically trained in the processes and procedures that [the petitioner] wishes to be employed in each of its projects, consistent with its SEI-CMM Level 5 quality assurance methods." The petitioner suggested that other employees assigned to the same project do not have the same level of experience with the organization or are "not as specialized in their knowledge level with [the petitioner's] processes and procedures." The petitioner further noted that the beneficiary's training and work experience in the foreign corporation separates his knowledge from the general knowledge possessed by a "typical Information Technology Analyst." As the petitioner failed to document the beneficiary's SEI-CMM training, these claims have little value. However, despite the lack of documentation, the petitioner failed to demonstrate that the beneficiary's knowledge is more than knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

Although the petitioner asserted that the beneficiary's responsibilities differ from those of a "typical Information Technology Analyst," the petitioner offered no description of the tasks performed by a "typical" information technology analyst, nor did it explain why the beneficiary's position of "senior programmer" should be compared to this position. Absent some explanation of what level of knowledge and experience is "typical" for this position and evidence that the beneficiary somehow exceeds this threshold, the petitioner cannot establish that the beneficiary's knowledge and/or experience are comparatively "advanced." The beneficiary was employed by the foreign entity for approximately 23 months prior to his transfer to the United States, and during this period, his role was as a "team member." The position as described in the beneficiary's resume involved "low-level design," coding, server end programming, system testing and performance tuning and other programming tasks, using common technologies, with no apparent special or advanced duties, nor any particular responsibility for ensuring quality assurance processes and procedures according to SEI-CMM Level 5.

Although the petitioner indicates that only about half of its information technology consultants worldwide have received the SEI-CMM Level 5 training, the petitioner has not further explained how the training received and knowledge possessed by these 9,500 employees differs from the other half of the petitioner's workforce, nor has it specifically indicated what proportion of senior programmers within the company have completed the same training as the beneficiary. The petitioner suggests that only the employees who have completed the SEI-CMM Level 5 training are eligible for transfer to the United States as L-1B specialized knowledge workers.

While the claimed specialized 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 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.

Furthermore, if all employees must undergo the same training and work experience prior to working in the United States as a specialized knowledge employee, 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 had completed the SEI-CMM training program and worked as a programmer with the parent company for at least one year possesses specialized knowledge. However, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee status. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

The petitioner has also failed to establish the beneficiary's knowledge as specialized within the petitioner's industry in general. The services the petitioner provides are based on technologies, programming languages, and application environments that are common in the information technology industry and are generally known and utilized by similarly employed workers outside the petitioner's organization. While all information technology companies develop internal tools, methodologies, processes and quality standards for implementing and managing customer projects, there is insufficient evidence in the record to establish that the

petitioner's processes and methodologies differ substantially from those of other companies implementing similar projects based on the same applications and technologies. The petitioner's claim that the beneficiary's knowledge is different from that generally found in the industry is based on the company's achievement of a Level 5 SEI-CMM assessment. Relying on the Puleo memorandum, counsel states that this knowledge is "different from that generally found in the software sector not only in the United States but internationally."

The beneficiary's ability to execute Level 5 assessed software development and maintenance processes does not by itself establish that the beneficiary's knowledge is different from that generally found in the industry. The Software Engineering Institute is a research and development center that offers, among other things, education and training classes organized to aid companies in determining their ability to develop and maintain software. See SEI Education and Training, Introduction to the Software CMM, <http://www.sei.cmu.edu/products/courses/info/intro.cmm.html>, (last updated Nov. 4, 2003). Because SEI is a voluntary training facility, any software company can purchase a report on how to perform software process assessments and train its employees in order to receive a Level 5 rating. Although requested by the director, counsel failed to provide evidence that the beneficiary possesses knowledge that can normally be gained only through prior experience with the petitioning organization. Although it may be difficult for an organization to achieve Level 5 status, the knowledge to gain that status is widely available, and likewise "generally found in the industry." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, counsel essentially asserted that the beneficiary's knowledge is different from that generally found in the software sector because of the beneficiary's employment within an organization that elected to receive training from SEI. As stated previously, software companies are not obligated to attend training provided by SEI. The petitioner has failed to provide evidence establishing that a company that does not participate in software process assessment training from SEI does not employ senior programmers that possess knowledge equivalent to that of the beneficiary. There is no evidence in the record that supports a finding that the CMM assessment results published by SEI are indicative of the knowledge possessed by all analysts in the software industry. In fact, counsel indicated in his brief on appeal that the only organizations assessed by SEI are those that actually participate in training and report their results. Therefore, counsel has failed to establish that the beneficiary's SEI training alone differentiates his knowledge from that generally found in the software sector.

Moreover, as noted above, there is no evidence in the record, such as a course certification or company affidavit, that establishes the beneficiary actually received the claimed SEI-CMM training. The petitioner merely asserted that the beneficiary is one of 9,500 information technology professionals within the petitioner's organization to have received the SEI-CMM Level 5 training. 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.

Lastly, counsel claims that the legislative history of the L-1B classification indicates that Congress' intention "was to acknowledge the growing scope of international business and the need to allow the free transfer of key personnel to the United States in order to facilitate and promote business objectives of multinational organizations." 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. In *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C.

1990), the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court noted that the legislative history demonstrated a concern that the L-1 category would become too large: "The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service." *Id.* at 16 (citing H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815). The court stated, "[I]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to 'key personnel' and executives." *1756, Inc.*, 745 F. Supp. at 16. In accordance with the statute and the legislative history, it would be inappropriate to expand the visa category to allow the entry of any personnel who already had knowledge of a petitioner's operations.²

If the AAO were to follow counsel's reasoning, then any employee would qualify for a specialized knowledge visa if that employee had experience working for a company with special accreditation, such as SEI-CMM Level 5. The evidence presented indicates that thirty-seven organizations have attained SEI-CMM Level 5 certification. To assert that any employee of these organizations should qualify for an L-1B visa would fundamentally alter the nature of the visa classification. Such an expansion of the term "specialized knowledge" would transform the visa classification from one for aliens with specialized knowledge to one for any employee working for an enterprise at the forefront of its field. In short, counsel's interpretation of the regulations improperly emphasizes a firm's accreditation rather than an employee's specialized knowledge.

Furthermore, it should be noted that Congress' 1990 amendments to the Act did not specifically overrule *1756, Inc.* or 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.

H.R. REP. NO. 101-723(I), 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418. As previously noted, the statutory definition states, "[a]n 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." 8 U.S.C. § 1184(c)(2)(B).

Prior to the Immigration Act of 1990, the statute did not provide a definition for the term specialized knowledge. Instead, the regulations defined the term as follows:

² Similarly, in *Matter of Penner*, the Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." 18 I&N Dec. 49 (Comm. 1982). 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. *Id.* at 53.

"Specialized knowledge" means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organization's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

8 C.F.R. § 214.2(1)(1)(ii)(D)(1990).

The AAO does not dispute that the petitioner's organization has its own internal information systems processes, tools, and methodologies. However, there is no evidence in the record to establish that the beneficiary's knowledge of these systems processes and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the claimed "advanced knowledge." The petitioner has not submitted sufficient documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures and methodologies would differentiate him from any other similarly employed senior programmers within the petitioner's group or within the industry. 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. at 165.

An evaluation of the record reveals that other software companies have achieved an SEI-CMM Level 5 rating, that the claimed specialized knowledge itself is itself widely available, and that other organizations, although not assessed at an SEI-CMM Level 5, may employ workers with knowledge equivalent to that of the beneficiary. It is further noted that the petitioner claims that the beneficiary is one of approximately 9,500 information technology professionals to have received the SEI-CMM level 5 training, thereby raising doubts that the beneficiary should be considered "key personnel" based on his purported completion of this training and 27 months of employment with the foreign entity in the role of senior programmer or "team member." Finally and most important, the petitioner has failed to document that the beneficiary has actually received the petitioner's SEI-CMM Level 5 training, the basis for the beneficiary's claim to specialized knowledge.

In sum, the beneficiary's duties and technical skills demonstrate knowledge that is common among computer systems professionals 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 petitioner's organization. However, the successful completion of one's job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a "key personnel," nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

The AAO notes that counsel's reliance on the Puleo memorandum is misplaced. 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. The memorandum was issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the 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 memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents. 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.

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.

It is noted that the current petition is for an extension of a L-1B petition that was previously approved by a U.S. consular officer pursuant to the petitioner's Blanket L petition. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the officer. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988)*. It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988)*.

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.