

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

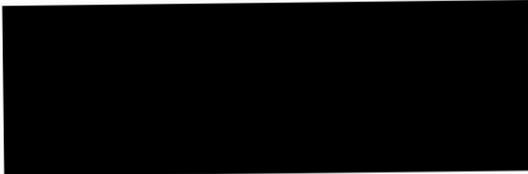
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

87



File: WAC 05 235 50153 Office: CALIFORNIA SERVICE CENTER Date: JAN 19 2007

IN RE: Petitioner:
Beneficiary:



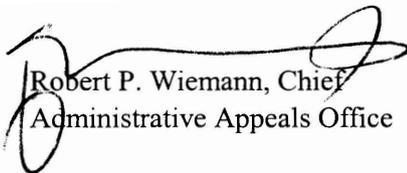
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101 (a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California general partnership, states that it provides tax preparation services and operates as an electronic tax transmitter for the Internal Revenue Service. The petitioner claims to be the parent company of the beneficiary's foreign employer, [REDACTED] Inc., located in Mandaluyong City, Philippines. The petitioner seeks to employ the beneficiary as an electronic transmission specialist.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge as a result of his experience with the foreign entity or that he will be employed in the United States in a capacity that involves specialized knowledge.

On appeal, the petitioner asserts that the director's decision contained a critical misstatement of fact. The petitioner asserts that the knowledge the beneficiary possesses of electronic tax transmission error detection and resolution is "unusual, advanced and truly specialized knowledge," requiring training, education or experience directly related to the proposed duties in the United States. The petitioner submits a brief and additional documentary evidence in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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

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

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

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

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

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

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

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

The nonimmigrant petition was filed on August 24, 2005. The petitioner, a tax preparation service and "Authorized IRS e-File Provider," stated in an attached document titled "Brief Business Principles and Plans," that the U.S. company outsources electronic data filing accuracy review to its Philippine subsidiary, and seeks to increase efficiency by relocating the outsourced staff from the Philippines to the U.S. office for four months during every U.S. tax season. In an attachment to Form I-129, the petitioner described the beneficiary's proposed duties in the United States as follows:

Electronic Transmission Specialist: Under the supervision of [the petitioner's] Managing Partner of the company [the beneficiary] will receive, review and prepare for electronic filing of Income Tax Returns of various satellite offices, using data criteria of mainframe computer network system of Internal Revenue Service. Coordinate with suppliers for delivery and maintenance of transmission equipment and other expendable supplies. Coordinate with software developer on client's data that are encountering problems on system acceptance.

The petitioner indicated that the beneficiary has been employed as the Vice President for Outsourcing, Transmission and Technical Operations with the foreign entity since July 1, 2003. The petitioner submitted the following description of the beneficiary's current position with the foreign entity:

Derives authority from the President of the company. Responsible for the hiring, training, and general supervision of outsourcing personnel. Responsible for electronic transmission of

outsourced data to US Head Office. Ensures the development of facilities and installation of equipment, including the acquisition of updated transmission software. Conceptualizes and implements marketing strategies for eventual expansion of outsourcing services and areas of transmission operations.

1. Ensures that data encoded reconciles with the data submitted and signed by clients.
2. Reconciles received files with transmitted files and acts on any inconsistency.
3. Performs electronic data transmission between the U.S. based operations and the Asian counterparts, especially on outsourced data
4. Coordinates and conducts training of onsite personnel involved in outsourced data entry operations.
5. Directs the smooth flow and efficiency in servicing clients.
6. Ensures efficient operations of on and off site computer facilities by ordering the correct specifications of transmission equipments.
7. Ensures acquisition of various transmission software updates from Head Office.
8. Ensures confidentiality of all internal systems, procedures, and customer data.
9. Directs the design of advertising materials for publication in various dailies.
10. Performs other tasks as may be assigned from time to time.

The petitioner stated that the beneficiary's current position requires two years of experience in electronic data transmission, two years of professional experience in tax practice, five years of managerial experience, and proficiency in computer applications such as Excel, Word and Powerpoint.

The director issued a request for evidence on September 28, 2005. In part, the director requested that the petitioner explain: (1) how the duties performed by the beneficiary abroad and those he will perform in the United States are different or unique from those of other workers employed by the petitioner or other U.S. employers in this type of position; (2) exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and whether it is used by other employers in the United States and abroad; (3) how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in the beneficiary's field; and (4) the impact upon the petitioner's business if the petitioner is unable to obtain the beneficiary's services, and what alternative action will be taken to fill the responsibilities. The director also requested a more detailed description of the beneficiary's current duties in his role with the foreign entity.

In a response received on November 29, 2005, the petitioner provided the following more detailed description of the beneficiary's current duties with the foreign entity with respect to electronic data transmission:

Based on e-mail advisory or facsimile messages from US Head Office and US satellite offices, the beneficiary lists down references numbers (e.g., SSN, EIN, FIN) of clients needing to be reviewed.

Opens e-mail and down load clients['] tax returns files of IRS' 1040, 1120, 1041, 1065, 2555 and others sources files of filled-up tax forms according to taxpayer types and saves the electronic file per client under IRS approved transmission software (Drake Software).

Reviews the contents as to the correctness of entries of names of the taxpayer, names of employer or paying party, address of the taxpayer or paying party, civil status, SSN, EIN, or FIN, as the case maybe [sic], and compares entries vis-à-vis Forms W-2, W-2G, 1099, 1099DIV, 1099INT, 1099B, 1099G and other forms indicating sources of income of the taxpayer. Compares the data with the prior years data, if any.

Compares current tax returns with prior years tax returns and notes down any unjustified or unreasonable changes of data.

Coordinates with US Head Office and US satellite offices tax preparers and encoders and seeks clarification on questionable items.

Sets aside cleared client files for electronic transmission; uncleared files are left pending.

Daily, opens e-mails to upload taxpayers income tax returns that have been previously cleared for transmission. Using the Drake software protocol, transmits tax returns to IRS and State Computers. As a common example, the protocol would require conformity of tax payable or tax refundable amounts appearing on the list of tax returns for transmission with previously mentioned e-mail advisory or facsimile messages sent by the tax preparer. Any discrepancy will have to be investigated. In some cases, the investigation would show that the software of the tax preparer was not updated.

With 12 hours, using the Drake Software protocols, downloads Federal and State Tax authorities' acknowledgements of tax return and takes note of rejected files.

Verifies rejection codes and decodes the same and executes error resolution processes depending of [sic] types of errors encountered. . . .

Seeks assistance from US-based tax preparer for acquisition of correct data and introduce the necessary correction on the tax returns file.

When the correct data are introduced to the tax returns file, re-transmits the file and waits for results.

In response to the director's request that the petitioner explain any special or advanced duties to be performed by the beneficiary, the petitioner stated that the beneficiary's proposed responsibilities "are unique and cannot be performed by other US-based employees." The petitioner emphasized that other United States employees desire permanent, year-round positions, a demand that the petitioner cannot fulfill due to the seasonal nature of the tax preparation business. The petitioner further stated "these other US-based employees bear no

experience in outsourcing, technical data review, and electronic transmission." The petitioner further described the beneficiary's proposed duties as follows:

The Beneficiary will review the encoded data prepared by the U.S.-based Tax Preparers for acceptability by IRS computer mainframe and State computers.

Another task that the beneficiary in the US soil will perform is the transmission of tax data to IRS and State computers. The transmission to computer mainframes is a highly technical task that only well-trained transmitters can handle. The U.S.-based tax preparers can no longer have the time to perform the duties of transmission due to the increasingly high volume of clients asking for assistance in the income tax returns preparations, aside from being too busy with encoding especially during the peak tax season.

The third task that will be assigned to the Beneficiary ... is the handling of errors. Again, this task is highly technical and only trained individuals are allowed to carry out the job. The task requires familiarity with coded error messages and the expertise on how to get to the bottom of the errors. If errors are not resolved in time clients will start complaining and will question the credibility of the Company. Furthermore, under a face-to-face situation, there is better opportunity for the Beneficiary to interact personally with the tax preparer and/or clients in the resolution of error messages....

The Beneficiary, as a US-based employee, will be required to assist during the busy season of income tax return submission to the IRS for the months of February, March and April. The employee will return to foreign subsidiary right after the peak season to assume his usual duties abroad.

The petitioner further explained that electronic transmission of tax returns and error management are "special skills that the Beneficiary has acquired over the years," requiring familiarity with the tax software utilized by the company, as well as familiarity with error codes utilized by tax authorities. The petitioner stated that error management is a "special skill" that is "uniquely required of the processes, not readily available among the employees of the Company, and perhaps in the U.S." The petitioner indicated that the petitioner and its related offices utilized a professional tax preparation and electronic-filing software designed by [REDACTED] Ltd., stressing that the software is not commercially available. The petitioner further stated that its data encoders undergo extensive training in the software, and must keep updated on yearly enhancements and upgrades.

With respect to the beneficiary's training, the petitioner stated that the beneficiary has been involved in the hands on review and transmission of data to the IRS and state tax authorities since 1999, and has attended training sessions in the United States and in the Philippines that were conducted under the supervision and coaching of the petitioner's managing partner. The petitioner further explained that the beneficiary's training was concentrated in the review of data provided by the client and the tax preparers, noting that he was formally trained in the transmission of tax documents, error resolutions of rejected returns and transmission of refilled data using Drake Tax Solutions. The petitioner emphasized that the beneficiary possesses six years of

transmission experience, noting that "any new or seasonal employee cannot match the beneficiary's familiarity of error codes and expertise." The petitioner further indicated that the beneficiary's responsibility for reviewing, transmitting and decoding activities are distinct from those performed by the petitioner's tax preparers, and that his responsibility for monitoring production performance of the petitioner's satellite offices is "unique and distinct from all other jobs." As evidence of the beneficiary's training, the petitioner submitted a certificate indicating that the beneficiary attended a five-day training session in "Electronic Transmission Using [REDACTED] Solutions" held at the petitioner's office in September 2002.

The petitioner indicated that without the beneficiary's services, the petitioner "would have to spend more time and efforts to scrutinize all the entries thus making the work more time consuming and less clients to serve, therefore, less business opportunities."

The director denied the petition on December 27, 2005, concluding that the petitioner had not established that the beneficiary possesses specialized knowledge, or that the offered position requires specialized knowledge of the petitioner's products, processes or other interests. The director observed that the petitioner is using software developed by a third-party company, not a proprietary software developed by the petitioner itself. The director noted that, based on the petitioner's representations, other employees who could competently perform the proposed duties of the position are available, and "the only obstacle in hiring them is their demand for a permanent position."

The director further determined that the beneficiary's proposed duties appear to be typical of any employee working in an electronic tax return transmission office and have not been shown to require specialized knowledge. The director acknowledged the beneficiary's six years of experience in tax data transmission, but found that the petitioner had failed to demonstrate that the beneficiary's knowledge is advanced relative to the petitioner's industry at large. The director concluded that the petitioner had not demonstrated "that the beneficiary has unusual, advanced or specialized knowledge of the petitioning organization that would be gained only by the completion of substantial or extensive specialized training, education, or experience directly related to the duties of the proffered position."

The AAO observes that the director's decision includes the following statement: "The petitioner has not demonstrated that the parent company's food preparation techniques are so unique and out of the ordinary that their implementation requires specialized knowledge." The director's reference to the petitioner's parent company's "food preparation techniques" is withdrawn. Despite this erroneous reference, a review of the director's decision as a whole reveals that proper review and consideration was given to the evidence submitted by the petitioner, including the beneficiary's proposed job duties within the context of the petitioner's group's status as a tax preparer and provider of electronic tax return transmission services.

On appeal, the petitioner asserts that "the petitioner does not prepare food and the petitioner is not in food preparation techniques." The petitioner attaches handbooks published by the Internal Revenue Service and the California Franchise Tax Board for use by authorized e-file providers of federal and California state tax returns, noting that these are "the very handbooks which the beneficiary was required to understand, be very knowledgeable with, and underwent training for." The petitioner notes that the handbooks contain "errors codes and sequencings," and that knowledge of the error codes "is not ordinary, not normal, nor usual."

The petitioner further asserts that "this tax transmission error detection and resolution knowledge is unusual, advanced and truly specialized knowledge which can only be gained through substantial and extensive specialized training, education, or actual experience directly related to the duties of the proposed beneficiary."

On review, the petitioner has not demonstrated that the beneficiary has specialized knowledge or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. As noted above, the director's error in referring to the type of business operated by the foreign entity, while regrettable, does not lead to a conclusion that the director failed to properly consider the evidence submitted by the petitioner, or to understand that the petitioner in fact operates as an IRS authorized e-file provider.

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

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

Id. at 53.

In this case, the petitioner neither asserted nor provided evidence that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or that she possessed an advanced knowledge or expertise in the

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

company's processes and procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). Rather, the petitioner described an employee who has been and would be performing duties, including data review, electronic transmission of tax returns, and error resolution tasks, using knowledge that is widely known within the beneficiary's occupation. The petitioner has not identified any aspect of the beneficiary's position that involves special knowledge specific to the petitioning organization and its foreign affiliate and has therefore failed to satisfy the essential element of eligibility for this visa classification.

The beneficiary's training in the use of industry-standard tax preparation and electronic submission software and familiarity with the contents of IRS handbooks for authorized e-file providers, cannot be considered specialized knowledge related to the petitioning organization and do not establish "specialized knowledge" as contemplated by the statute and regulations. Any worker who has worked extensively with the electronic filing of federal tax returns with the IRS could reasonably be expected to possess essentially the same knowledge, skills and experience as the beneficiary without having worked for the petitioner or the foreign entity. The petitioner has offered no documentary evidence which would distinguish the petitioner's and foreign entity's processes, strategies, methods, technologies or environment from that of any other company offering similar services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has not submitted any evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other similarly-employed workers within the petitioner's group or working for other employers within the U.S. tax preparation and electronic filing industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. 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 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.

Although counsel refers to the beneficiary's six years of specialized experience in his field, it is clear that the knowledge and skills that allow him to successfully perform his duties are widely available to any employee performing similar responsibilities for any business authorized by the IRS to electronically prepare and submit U.S. tax returns. The petitioner has not explained how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others with a similar educational and professional background, and has not substantiated its claim that the beneficiary's knowledge and skills are

not available within the U.S. company, or within the United States. While it is undoubtedly helpful that the beneficiary is familiar with the petitioner's and foreign entity's business, the petitioner has not established that prior experience with the foreign entity is actually required in order to perform duties related to the electronic transmission of U.S. tax returns. Although the petitioner emphasizes the beneficiary's years of training, it has provided a copy of only one training certificate for his attendance of a five-day course in "Electronic Transmission Using [REDACTED] Solutions." The petitioner has not substantiated its claim that the beneficiary's knowledge is advanced compared to other employees within the organization. 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. Further, as discussed above, the beneficiary's claimed specialized knowledge must relate specifically to the petitioning company. As noted by the director, the petitioner noted that its main obstacle to hiring employees locally was its inability to offer permanent positions due to the seasonal nature of its business.

The beneficiary's knowledge and expertise do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests required by the regulations. In *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." In the instant case the petitioner has successfully demonstrated that the beneficiary is knowledgeable in the process of electronically submitting U.S. tax returns and correcting any resulting errors to ensure acceptance of tax returns. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise of a company's product or processes and procedures, rather than skill in a particular field. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The record does not establish that the beneficiary has specialized knowledge or that he would be employed primarily in a specialized knowledge capacity.

In sum, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among professionals working in the electronic tax return submission 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 used by the petitioner are substantially different from those used by other IRS-authorized electronic filing service providers. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to successfully perform his job duties for the foreign entity. However, 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. Rather, an evaluation of the record reveals that other authorized e-file service providers utilize comparable tax transmission software and are required to be familiar with industry-standard IRS error coding processes and resolution procedures, and that other organizations employ workers possessing technical knowledge and skills equivalent to that of the beneficiary.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary

should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. Accordingly, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.