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File: LIN 06 084 51652 Office: NEBRASKA SERVICE CENTER Date: JUL 05 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

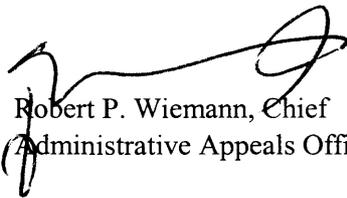
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Idaho that claims to be engaged in the export and trade of locomotive parts. The petitioner states that it is an affiliate of the beneficiary's previous employer, Honeydew Auto, Inc., located in Calgary, Canada. The petitioner seeks to employ the beneficiary as its chief executive officer for a two-year period.¹

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that the beneficiary would be employed in a capacity that requires specialized knowledge. The director noted that the beneficiary's claimed specialized knowledge, including knowledge of Spoornet, the South African railway system, South African currency, international shipping routes, and South African customs and import regulations, is not specific to the petitioning organization.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner disputes the director's decision and suggests that the decision denigrates the functions to be performed by the beneficiary and the "specialized service skill" required to perform the duties of the offered position. The petitioner also questions the director's observation that the position appears to call for a person with management skills when the petitioner's previous L-1A classification petition was denied. The petitioner submits a brief in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

¹ The beneficiary was previously granted L-1A classification for a one-year period (from September 16, 2004 to September 15, 2005) in order to open a new office in the United States. The petitioner's petition to extend the beneficiary's L-1A status was denied (LIN 05 247 51191), and the AAO dismissed the petitioner's subsequent appeal.

- (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 beneficiary's employment abroad and proposed U.S. employment is in a capacity that requires specialized knowledge.

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has 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 January 26, 2006. The petitioner indicated on Form I-129 that the beneficiary would have "executive authority for all U.S. operations, including budgetary, operational and personnel matters." In an appended letter dated August 10, 2005, which was apparently submitted in support of the beneficiary's previous L-1A petition, the petitioner described the beneficiary's duties as follows:

As Chief Executive Officer, [the beneficiary] has full decision-making authority over all of the company's budgetary, personnel, and business operations matters. He establishes the company's annual budget plus financial goals and expectations. He is authorized to sign contracts and establish lines of credit. He exercises executive authority over which product lines we supply, and under what terms. He represents our company in the U.S. and maintains strong business relationships with our corporate [sic] suppliers. He also establishes our freight forwarding and shipping policies. When staff are hired, which we expect to occur in

the coming year, [the beneficiary] will have full executive authority on personnel issues, including staff hiring, management, and supervision. [The beneficiary] directly reports to [the company president], providing regular assessments of [the petitioner's] progress and his vision for its future. He also prepares reports and analyses regarding the company's cash expenditures and earnings, budgetary needs, contracting arrangements, and market and business prospects.

The petitioner noted that the U.S. company is the "sourcing, pricing and exporting" division of its South African parent company and primarily buys and exports U.S.-manufactured locomotive, rail and railcar parts to a foreign affiliate. The petitioner noted that during the first year of operations the U.S. company "prepared well over 1,000 price quotes in response to tender offers" from Spoornet, a South African rail transportation provider.

The petitioner also submitted a letter from its parent company, dated October 28, 2005, that was previously submitted in response to a request for evidence in connection with the beneficiary's previous L-1A classification petition, and which was intended to establish his employment in a managerial or executive capacity. As the letter is part of the record of proceeding, its contents will not be repeated here.

In addition, the petitioner submitted an affidavit from the beneficiary in which he states that he has gained "specialized knowledge" in the following areas during the course of his employment with the petitioner and in more than 14 years of experience working in trade and export-related positions in South Africa and Canada:

Knowledge of [the U.S. petitioner's] products:

I am familiar with all of the types of locomotive parts that Boise Rail purchases in the U.S. and exports to our South African parent company, Deomac, Inc. Deomac is one of only five authorized suppliers for Spoornet, the South African railway system. I am familiar with the technical specifications for the parts as required by Spoornet. I am familiar with the types of locomotive parts that Deomac provides to Spoornet and the type of Spoornet tenders that Deomac chooses to bid on. I am familiar with which of these products are obsolete in the U.S. and must be custom manufactured to meet technical specifications. I am familiar with the types of product warranties [the petitioner] requires from its manufacturers to enable [the foreign entity] to meet its contractual obligations to Spoornet. I am familiar with methods for inspecting U.S. manufacturing facilities to ensure that the products are produced in such a way as to meet acceptable quality control standards and documentary requirements. I am fluent in Afrikaans, an official language in South Africa, and am thus able to translate bid requests into understandable US terminology. I have specialized knowledge of the different units of measure and weights used by both countries and can adapt them accordingly.

Knowledge of [the U.S. petitioner's] Management, Processes and Procedures

Having served as Chief Executive Officer of [the petitioner] since October 2004, I have been responsible for establishing all of [the petitioner's] management processes and procedures,

including its accounting and bookkeeping practices, record keeping and ordering procedures and shipping policies. I am familiar with the suppliers, manufacturers, and shipping companies [the petitioner] relies on to supply and ship its locomotive parts domestically and internationally. I am familiar with the types of financial reports and forecasts that must be produced for our parent corporation, Deomac, and the manner in which the company's President prefers to receive information. I am familiar with [the petitioner's] processes for authorizing payments, obtaining credit, and other cash flow management procedures.

I am familiar with the types of contract provisions [the petitioner] requires, including specific terms regarding quantity, quality, applicable warranties, product availability, shipping and freight costs, etc. I recently negotiated a Small Business Administration loan on the company's behalf, and am familiar with [the petitioner's] obligations under that loan. I am familiar with the internal company documents required to prepare price quotations, track orders, and oversee shipping and freight handling. I am familiar with the local vendors and professionals that the office uses to sustain its operations and maintain compliance with local, state, and federal laws.

Knowledge of [the U.S. petitioner's] Activities in International Markets

I have experience in monitoring fluctuating currency rates for the U.S. dollar and the South African Rand, and for evaluating the impact of these changing rates on [the petitioner's] and Deomac's bottom lines. I have experience selecting appropriate international and domestic shipping companies and routes, and determining how shipping times will impact our ability to meet our contractual obligations and our bottom line. I have experience in providing Certificates of Manufacture, compliance certificates, customs clearance and other documents that must be tendered before products will be allowed into South Africa under that country's strict customs and import regulations.

With respect to the beneficiary's foreign employment, the petitioner stated on Form I-129 that the beneficiary was employed as the chief executive officer for the petitioner's Canadian affiliate, an automotive trading company, from March 2003 until September 2004, where he exercised "full executive authority over all budgetary, operational and personnel matters."

The director issued a request for additional evidence on January 31, 2006. The director noted that the beneficiary's claimed specialized knowledge "appears to relate to other companies such as Spoornet, the South African Railway system, South African currency, domestic and international shipping routes from North America to South Africa, and of South African customs and import regulations." The director advised the petitioner that it had not established that the beneficiary's knowledge in these areas is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by similarly employed workers in the industry. The director also advised that the evidence submitted failed to establish that the position in the United States requires a person with "specialized knowledge" as defined in the regulations.

Accordingly, the director instructed the petitioner to submit evidence that the beneficiary possesses specialized knowledge of the petitioner'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 which is unique to the industry and not routinely possessed by peers who are similarly educated or engaged within the industry.

The director further advised that if the petitioner claims that the beneficiary possesses an advanced knowledge of the processes and procedures of the company and its products, it must submit documentary evidence to describe and distinguish that knowledge from the elementary or basic knowledge possessed by others who are similarly employed within the industry.

In response, the petitioner submitted a letter from the president of the U.S. and foreign entities, who referenced his long-time friendship and business association with the beneficiary, and noted that the beneficiary provided financial advice to the foreign entity from 1980 until 1994 while employed by an unrelated company. The petitioner stated that the beneficiary advised the foreign entity "regarding life insurance, pension planning, 401K-type plans for the staff, corporate risk management, as well as asset and liability insurances." The petitioner states that during this time, the beneficiary became familiar with the company's needs in the areas of project finance, growth planning, loss prevention and strategic risk control, as well as becoming aware of the company's earnings, product lines, manufacturing processes, business dealings and customers.

The petitioner's president further stated:

[The beneficiary's] long business partnership and friendship with me and my company has enabled him to communicate effectively with our South African corporate head office. I trust [the beneficiary] with large sums of money, with the ability to sign contracts and assume liability on the company's behalf. [The beneficiary] knows all about the management of Deomac. He knows the type of financial information we require. He also knows my preferences regarding the types of contracts we are willing to approve for the company, he knows the product lines, the amount of risk Deomac is willing to sustain and when to take a risk that he knows will be for the benefit of the corporation.

The petitioner also stated that the beneficiary possesses specialized knowledge of the petitioner's products, research, procurement techniques and safety standards. The petitioner noted that the U.S. company's business consists of purchasing products for export to its foreign parent and affiliate, which in turn supply the products to the locomotive division of the South African Railway. The petitioner emphasized that the locomotives operated by Spoornet were built in the 1950s and 1960s, and that the beneficiary has had to locate American companies who are willing to custom manufacture parts needed by Spoornet, thus requiring familiarity with Spoornet and the U.S. locomotive parts industry. The petitioner stated that it knows of "no one else who has as much knowledge as [the beneficiary] regarding both of these entities."

The petitioner also explained that Spoornet has a complicated contracting system and only issues tenders to five authorized suppliers. The petitioner noted that of the five suppliers, only the petitioner's group has opened

an office in the United States to deal directly with U.S. manufacturers. The petitioner states that as a result, the beneficiary has had to become familiar with technical drawings, read technical manuals and manufacturers catalogs, and learn American terminology for locomotive parts. The petitioner stressed that the beneficiary "knows all about the processes through which Deomac responds to Spoornet's tenders," and stated that the beneficiary "knows how much risk Deomac is willing to take. He also knows what kind of contractual terms we require to be included in the warranties, and what kind of delivery periods and testing requirements we need." In addition, the petitioner noted that the beneficiary is able to ensure that the products are manufactured to Spoornet's standards, and is aware of its test and safety standards, which differ in the U.S. and South Africa.

The petitioner also stated that the beneficiary possesses special knowledge to advance its interests in international markets, noting that he is familiar with "South Africa's customs and import regulations, South African currency and international shipping routes." The petitioner stressed that the beneficiary completed a Business Management Program through the University of South Africa "to stay up-to-date on current business models used in the country."

In addition, the petitioner emphasized that the beneficiary's knowledge is unique within the industry and not possessed by others within the company, as each individual in the company "is specialized in their own field." The petitioner indicated that they were unable to find a suitable U.S. candidate due to the company's requirements that the candidate possess advanced business skills, reasonable technical knowledge, the ability to work unsupervised, trustworthiness, familiarity with older locomotive equipment, and a knowledge of the differences between equipment terminology in the U.S. and South Africa.

The petitioner also submitted a letter from James Washburn, president of Idaho Railway Supply, Inc., who noted that, due to the beneficiary's "specific and noteworthy knowledge," his company is able to successfully bid and supply parts via the petitioner to Spoornet in South Africa. Mr. Washburn stated that the beneficiary has assisted his company to understand the South African procurement process, and to ensure that its products "meet South Africa's specific and unusual required standards." Mr. Washburn also noted that due to the age of the equipment used by Spoornet, many of the parts are considered obsolete by U.S. standards and "knowledge of this older system is no longer common among practitioners of this trade in the U.S."

The director denied the petition on May 8, 2006, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that the position offered requires specialized knowledge. The director noted that the beneficiary's claimed specialized knowledge, including knowledge of Spoornet, the South African railway system, South African currency, international shipping routes, and South African customs and import regulations, is not specific to the petitioning organization. The director acknowledged that it is understandable that the petitioner would prefer to transfer personnel to the United States who are familiar with the company's products, processes and procedures, and who possess an ability to immediately support the company's objectives. However, the director concluded that the evidence of record did not sufficiently establish that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality that is not generally known by practitioners who are similarly educated and/or engaged within the beneficiary's field of endeavor, or that the proposed position requires a person with "specialized knowledge" as that term is defined in the regulations.

The petitioner appealed the director's decision on June 5, 2006. On appeal, the petitioner states that the director's decision was "unfairly and excessively critical," demonstrated an "unreasonably narrow focus on the terminology," and failed to consider the "macro economic value of the business to the United States economy in general."

In an appellate brief received on July 10, 2006, the petitioner asserts that evidence was submitted to establish that the beneficiary "did further his studies and in fact graduated from the University of South Africa during this past period," and "made a serious effort in upgrading his qualifications by studying for and obtaining an Associate Degree in Business Management." The petitioner further emphasizes that the beneficiary was "actively involved with product familiarization and spent hours every week reading technical journals and meeting with manufacturers to be fully acquainted with the products, specifications and procedures."

The petitioner notes that it requires a skilled business person who is able to negotiate contracts and understand export finance, that the beneficiary possesses 25 years of highly regarded business accomplishments, and that such skills should be considered "an experienced, specialized service skill." The petitioner states that the director appears to have ignored the testimony of Mr. Washburn, who attested to the beneficiary's exceptional negotiation skills and "specialized ability." The petitioner also questions whether the director's denial of the specialized knowledge petition is "fair and reasonable" in light of a previous L-1A denial in which it was stated that the beneficiary's duties appeared to involve "special skills rather than management."

On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge, or that the prospective position requires "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D). 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.*

The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. See *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).² As

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

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.

Here, the beneficiary's proposed job duties do not identify services to be performed in a specialized knowledge capacity. For example, the beneficiary's responsibilities of sourcing and purchasing locomotive parts from U.S. manufacturers, negotiating purchasing contracts, making domestic and international shipping arrangements, establishing processes and procedures for bookkeeping, record keeping and ordering, and researching potential suppliers are all tasks typically performed by any individual responsible for overseeing a start-up procurement operation in a new market. The fact that the beneficiary developed the "management processes" of the new office and is the only person who has utilized such processes as the sole employee of the company does not equate to "specialized knowledge" as defined in the regulations. If the AAO followed the petitioner's argument to its logical conclusion, any person charged with establishing a start-up U.S. subsidiary of a foreign corporation would be deemed to possess an "advanced knowledge" of that company's processes and procedures and would qualify for the L-1B visa classification.

The record is devoid of any documentary evidence that the beneficiary's proposed position would involve the application of special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. As noted by the director, the knowledge required to perform the proposed duties is not specific to the petitioning organization. The petitioner purchases locomotive parts from unrelated U.S. manufacturers that will ultimately be utilized by the South African railway system. Familiarity with Spoornet's requirements for locomotive parts and its bidding and tender process, while perhaps uncommon in the United States in general, cannot be considered knowledge that is relative to the petitioner's group of companies. Similarly, the petitioner emphasizes the beneficiary's familiarity with shipping routes and practices between North America and South Africa, his experience with South African currency valuations, South African customs and import regulations, and his ability to speak Afrikaans, as evidence of his specialized knowledge. Again, such knowledge is generally available outside the petitioner's group of companies and would likely be held by any worker with a similar background in international trade between North America and South Africa. The beneficiary's ability to speak an official language of his home country does not rise to the level of specialized knowledge.

The AAO recognizes that the beneficiary was initially granted L-1A status in order to open a new office in the United States, and acknowledges that it is possible for an individual employed in a managerial role to meet the criteria for specialized knowledge capacity set forth at section 214(c)(2)(B). However, the petitioner has

not established that the particular position offered to the beneficiary requires an individual with knowledge, experience or characteristics beyond possession of good business negotiation skills, understanding of South African currency valuations, shipping routes, and import and customs regulations, and some understanding of locomotive parts and terminology used in the United States and South Africa. The petitioner does not manufacture a product nor does it market or sell its parent company's products or services. The beneficiary is needed to oversee the development of the business in the United States and to purchase and export products that are designed, developed and manufactured by unrelated companies, and which will ultimately be supplied to a customer who is unrelated to the petitioner's organization. The beneficiary apparently has sufficient knowledge of these products to negotiate prices and request customization to meet the end-users needs. However, knowledge of products manufactured by other, unrelated companies cannot constitute specialized knowledge of the *petitioner's* interests. Again, there is no evidence that the beneficiary would rely on "special" or "advanced" knowledge of the petitioner's products or processes in order to perform these duties.

Furthermore, the evidence of record demonstrates that the beneficiary gained much of the required general knowledge of South African trade prior to joining the petitioner's Canadian affiliate in 2003. The beneficiary's knowledge specific to locomotive parts was apparently gained through the study of technical journals and manuals and meetings with U.S. manufacturers subsequent to his transfer to the United States in L-1A status, as there is no evidence that he had any prior experience in that industry. The petitioner's claim that the beneficiary gained knowledge of the foreign entity's product lines and manufacturing processes while working as an external financial advisor to the South African company is not persuasive. Even if the petitioner had established that the U.S. position requires an individual with specialized knowledge, the petitioner has not established that the beneficiary's education, training, or experience has equipped him with "special" or "advanced" knowledge of the petitioner's products, services, processes, or methodologies. *See* 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner emphasizes on appeal that it requires a skilled businessperson, not a mechanical engineer or other technical specialist, to procure and secure parts and negotiate purchase terms and conditions. There is no evidence that the beneficiary has ever utilized specialized knowledge of the petitioner's processes in the performance of his job duties with the foreign entity or that his knowledge extends beyond that of mere familiarity that could easily be transferred to another individual with a similar professional background, who could presumably also read technical manuals to familiarize himself or herself with the products to be procured. There is no evidence that the beneficiary would rely on "special" or "advanced" knowledge of the petitioner's products or processes in order to perform the described duties.

Counsel represents the beneficiary's knowledge and skills as a culmination of factors, which, when considered together, constitute the claimed "specialized knowledge." The beneficiary's claimed specialized knowledge is based on his native knowledge of Afrikaans, his business negotiation skills, his familiarity with South African shipping and trade routes, customs and import requirements, his business and personal relationships with managers within the petitioner's parent company, his existing relationships with the petitioner's suppliers, their products and their capabilities gained by virtue of having worked with the petitioner in L-1A status, his formal education in business management, and his familiarity with the petitioner's processes, policies and procedures, again, gained by virtue of having been responsible for establishing the U.S. subsidiary. As discussed above, the products purchased by the petitioner for sale to its

parent company, while perhaps somewhat unusual due to their obsolescence by U.S. standards, are manufactured by other companies and the beneficiary's knowledge of these products appears to be limited to the ability to negotiate the purchase and relay the specific specifications and requirements of the ultimate end-user. Furthermore, although it may be unusual for a company to purchase parts for older locomotives manufactured in the U.S. in the 1950s and 1960s, mere familiarity with these products and the South African market does not constitute specialized knowledge. The beneficiary's own knowledge of the specific products sold by the petitioner has been gained only since his transfer to the United States and establishment of the U.S. company, and the petitioner has presented no evidence to suggest that the knowledge required to purchase these products from U.S. manufacturers could not be relatively easily transferred to another employee with experience in the international trade of locomotive parts. The combination of this general knowledge with the beneficiary's language and business knowledge, education, and business contacts within the foreign entity and with U.S. suppliers does not rise to the level of specialized knowledge contemplated by the statutory and regulatory definitions and precedent decisions. Again, the claimed specialized knowledge must relate specifically to the petitioning company.

Additionally, the petitioner has not submitted any evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other managers employed within the petitioner's group or working for other international employers within the locomotive parts 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*, "[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 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.

The petitioner claims that the beneficiary possesses an advanced knowledge of the petitioner's policies and processes and their application in international markets. Specifically, counsel asserts that the knowledge is "advanced" because the beneficiary developed the company's policies, procedures and goals and continues to be responsible for them. The petitioner has not defined the policies, processes and procedures developed by the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner attempts to differentiate the beneficiary's knowledge as special or advanced by claiming that the knowledge is essentially unique to the beneficiary, since he is the only employee of the U.S. company and was responsible for its establishment. However, such a statement could be made regarding any manager of any small start-up company. Again, the petitioner's logic leads to the untenable conclusion that any manager or executive who

failed to sufficiently develop a new office within the requisite one year may qualify for an extension of status as a specialized knowledge employee by virtue of having established the policies, procedures and operating plans for the new office. As discussed above, the duties performed by the beneficiary cannot be differentiated from those performed by any other manager charged with establishing a start-up operation in a new market.

Accordingly, the AAO does not disagree with the petitioner's assertion that the beneficiary is important to the operation of the U.S. company. However, the statute and regulations require the petitioner to demonstrate that the beneficiary possesses, and that the proposed employment requires, special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests, or an advanced level of knowledge or expertise in the organization's processes and procedures. The beneficiary's knowledge and expertise, while valuable to the petitioner, does not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations.

The AAO also acknowledges receipt of the testimony of [REDACTED], a railway supply entrepreneur, who attests to the beneficiary's "specific and noteworthy knowledge" and ability to assist his company with understanding the South African procurement process and ability to "interpret the terminology." While the opinions expressed by [REDACTED] are certainly respected, they are not persuasive in this matter, as they do not address the context of the beneficiary's job duties in light of the applicable regulations governing this visa petition. While the AAO does not doubt that the beneficiary possesses the skills referenced by [REDACTED], as discussed above, the beneficiary's knowledge and skills, however impressive, do not meet the statutory and regulatory requirements for specialized knowledge.

Finally, the AAO recognizes the petitioner's claims that the beneficiary's skill and knowledge have contributed and would contribute to the success of the petitioning organization. However, these factors alone do not constitute the possession of specialized knowledge. Likewise, while the beneficiary's contribution to the economic success of the company may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). Here, the beneficiary's role as the founder of the U.S. subsidiary may not be easily transferred to another individual, but the petitioner has not established that he actually possesses the claimed specialized knowledge. The fact that the petitioner and foreign entity consider the beneficiary to be irreplaceable is not sufficient to establish his eligibility for this visa classification.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F. Supp. at 16. Based on the foregoing, the record does not establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted evidence that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge, as required by 8 C.F.R. § 214.2(l)(3)(iv). The evidence of record indicates that the beneficiary was employed as

the chief executive officer of a now inactive Canadian affiliate of the petitioner from March 2003 until September 2004, where he "exercised full executive authority over all budgetary, operational, and personnel matters." No other evidence was submitted regarding the beneficiary's role with the foreign entity or the foreign entity's organizational structure, and it is therefore impossible to conclude that he was employed in a qualifying managerial, executive or specialized knowledge capacity based on this limited description. 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. For this additional reason, the petition cannot be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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

ORDER: The appeal is dismissed.