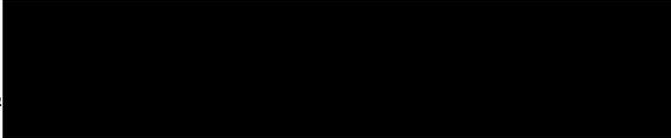




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File: WAC 05 082 54264 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2007

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:

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 in the position of software engineer 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 Delaware corporation, is a software and services company. The petitioner states that it is the parent company of the beneficiary's foreign employer, U.S. Interactive (India) Pvt. Ltd., located in India. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered to the beneficiary requires an employee with specialized knowledge or that the beneficiary possesses such knowledge.

On appeal, the petitioner disputes the director's decision and outlines the beneficiary's experience and specific specialized knowledge in the petitioner's software. The petitioner concludes that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures and therefore qualifies for the benefit sought. Counsel submits a brief and additional documentation 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 January 31, 2005. In a letter dated January 20, 2005, the petitioner stated "[the beneficiary] possesses the required specialized knowledge critical in successfully configuring and integrating [the petitioner's] products to the clients' business applications, operating systems, and business processes once the software products have been sold to [the petitioner's] clients in the U.S." The petitioner explained that its solutions are "built with unique combination of technologies, design methodologies and pre-integrated applications," and are designed to link its clients' "disparate applications, operating systems and business processes into one system."

In addition, the petitioner provided the following description of the beneficiary's proposed position as a software engineer:

[The beneficiary] will specifically be responsible for the implementation and customization of [the petitioner's] proprietary e2eHub software at client sites in accordance with the analysis and design prepared. She will make changes to the Portal connector for the proprietary e3eHub [sic] and for the customization in Portal software implementation based on specific customer requirements. She will also implement [the petitioner's] products for Telco customers in utilizing her specialized knowledge in key technologies used in the proprietary Enterprise Application Integration (EAI) services provided by [the petitioner] in the Telco markets, as well as [the petitioner's] products including [REDACTED]. Her experience in working with [REDACTED] in [the petitioner's] [REDACTED] clients has also involved the extensive use of proprietary [petitioner] products for EAI,

including key technologies such as Java, JDK, RMI, VSS used in the EAI services provided by [the petitioner] in the Telco markets. Since [the petitioner's] products are services targeted to the [REDACTED] marketplace, [the beneficiary's] expertise in [the petitioner's] proprietary software combined with her experience in the Telco market and Billing Software is very rare and will be vital in enhancing the ability of [the petitioner] to offer services to an expanding customer base in the U.S. In addition, [the beneficiary] will train U.S. employees and transfer her proprietary knowledge in e2eHub software and Telco Care, which are being implemented at Telco customer sites worldwide. [The beneficiary] has demonstrated her specialized knowledge in [the petitioner's] clients in the U.K., Hong Kong, and Jamaica. While [the petitioner's] products and services are offered by the company in the U.S. market, skilled engineers in this product sets are not readily available in the U.S. marketplace.

In this position, [the beneficiary] will function in a specialized knowledge capacity, in that she will use her specialized knowledge of [the petitioner's] products, services and their application in international markets. In addition, [h]er knowledge is different from the usual knowledge of an employee in this typical field due to her history of significant assignments using [the petitioner's] proprietary products which have enhanced productivity and competitiveness in the international marketplace. Her knowledge normally could only be gained through prior experience with [the petitioner], and it is a knowledge of products or processes which cannot be easily transferred or taught to another individual. Thus, [the beneficiary's] knowledge is special in that it surpasses the usual, i.e., it is distinct among others of its kind, and distinguished by its unusual, uncommon, and noteworthy qualities. Her knowledge is advanced in that it is highly developed and complex, at a higher level than others, and not generally known by others in the field.

In the letter dated January 20, 2005, the petitioner also stated the beneficiary's duties for the foreign company as follows:

In addition to her educational qualifications, [the beneficiary] has more than four years of experience with [the foreign entity.] She has successfully provided the design and analysis for the China Light and Power Telecommunication's business processes and flows, including the design and development of the end-to-end connectivity, coding, and testing of the modules, as well as the integration of the Portal with Vantive. She has gained extensive proprietary knowledge on system integration applications as well as the design, architecture and functionality of [the petitioner's] software products. As a Software Engineer on system integration, she has acquired intimate product knowledge that can only be gained from having designed and developed systems integration applications within [the petitioner's] organization. Her experience with [the foreign entity] will allow [the beneficiary] to employ her specialized knowledge of our software technology to enhance the successful integration of [the company's] products with our U.S. clients' products. To this end, [the petitioner] will be able to design and develop system integration successfully and efficiently for its U.S. clients, enabling [the petitioner] to take a leading position in the highly competitive eBusiness marketplace.

The petitioner submitted the beneficiary's resume that lists the beneficiary's technical skills including the tools, languages and methodologies the beneficiary has utilized in her work experience. The beneficiary's resume also lists all the projects in which the beneficiary has participated while employed by the petitioner, and the technologies used for each project. In addition, the petitioner submitted the beneficiary's educational documents including her school transcripts and certificate from Nagpur University where she was awarded a Bachelor of Engineering, a credential evaluation, and several letters of reference from the beneficiary's former employers.

On March 7, 2005, the director issued a notice requesting additional evidence in order to establish that the beneficiary has specialized knowledge. Specifically, the director requested: (1) an organizational chart of the foreign company, including the levels of supervision and the number and types of positions the alien supervises; (2) the total number of employees at the foreign company; (3) a copy of the U.S. company's organizational chart, including the levels of supervision and the number and types of positions the alien supervises; (4) the total number of employees at the U.S. company; (5) documentary evidence establishing the beneficiary possessed specialized knowledge above that which is normally possessed by other software engineers employed by the foreign company; (6) documentary evidence establishing the beneficiary possessed specialized knowledge above that which is normally possessed by other software engineers employed by the U.S. company; (7) a statement from the petitioner's client(s) commenting on the beneficiary's individual contribution to the project(s) to which she was assigned to; and (8) work orders written by Telco customers along with a complete itinerary of services or engagements where the beneficiary will perform those services.

In response, the petitioner submitted a letter dated May 17, 2005, responding to the director's request. The petitioner submitted the organizational chart for the foreign company indicating that the beneficiary did not supervise employees and she reported directly to the "project manager - Telco." The chart shows that the foreign company has a total of 14 employees. The petitioner also submitted the U.S. organizational chart which indicated that the beneficiary will not supervise any subordinates. The beneficiary will report directly to a business analyst. The petitioner indicated that the U.S. company has a total of 10 employees, excluding contractors.

In response to the director's request for documentary evidence establishing that the beneficiary possessed specialized knowledge above that which is normally possessed by other software engineers employed by the foreign company, the petitioner submitted the beneficiary's resume. In addition, the petitioner stated the following:

It will be seen from the resume that she has worked on numerous projects involving [the petitioner's] product called e2eHub and has been involved in building connections to the e2eHub for billing systems like Portal Infranet. This knowledge of e2eHub products and of the Connector Development Kit, is not possessed by most software engineers in our India office. Such knowledge is only imparted through formal training after an employee has been found to be technically capable of working with the tools and complexity of the e2e Hub and allied application software.

In addition, the petitioner submitted a letter from the managing director of the foreign company indicating that the beneficiary completed the following training courses: "e2eHub USI's EAI framework" (April 2002); "Portal Infranet" (May 2002); and "Connector Development" (Dec 2003).

In response to the director's request, the petitioner explained that the beneficiary possessed specialized knowledge above that which is normally possessed by other software engineers employed by the U.S. organization but did not submit documentary evidence as requested by the director. 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). The petitioner stated the following:

In the United States, most new hires do possess general Java and EAI skills but do NOT possess specific knowledge of the USA product e2eHub as such knowledge is only imparted through formal training from within [the petitioning company]. As an example, with reference to the US company's organizational chart enclosed, Ying Moy does NOT possess such e2eHub knowledge while Manjunatha Subbarya does possess it. However, Manjunatha acquired the e2eHub knowledge through the formal training imparted to him by [the petitioner] through his prior employment by [the foreign entity]. Similarly, [the beneficiary] has this unique knowledge of [the petitioner's] products and services which cannot be found with other software engineers in U.S. unless they have been employed with [the petitioner's group].

In addition, the petitioner submitted six invoices from the foreign company to establish that the beneficiary did indeed work on the projects indicated on her resume. In addition, the petitioner submitted three contracts between the petitioner and [REDACTED] clients as evidence that the beneficiary will be working to implement the petitioner's products for Telco customers.

Moreover, in response to the director's request for work orders written by [REDACTED] customers with a complete itinerary of services or engagements where the beneficiary will perform her services, the petitioner stated that "it is not customary for [the petitioner's] customers to identify specific [petitioning company] employees by name in their work orders as the practice has been for [the petitioner] to freely choose such team members." The petitioner also submitted partial copies of contracts made with the U.S. company. In reviewing the contracts, it appears that the petitioner will provide technical and support services, and maintenance for its clients. The petitioner states that these projects "can only be executed by an employee who has the specialized training, skill and experience in e2eHub and connectors as does the beneficiary."

The petitioner resubmitted the beneficiary's resume which indicates that the beneficiary commenced her employment with the foreign company in July 2000. The resume outlines the projects in which the beneficiary was a member of, and explains the technologies in which each system in the project was based on. It appears that the beneficiary first utilized the e2eHub product in January 2001, six months after commencing her employment with the foreign company and nearly two years before completing the petitioner's e2eHub training. In addition, the beneficiary's resume indicates that the beneficiary worked on twelve projects with the foreign company, six of which the beneficiary worked with the petitioner's e2eHub product.

On June 23, 2005, the director denied the petition concluding that the petitioner did not establish that the position of software engineer requires someone with specialized knowledge, or that the beneficiary has such knowledge. The director noted that the beneficiary's duties do not appear to be significantly different from those of any other software engineer employed by the petitioner, or different from the duties performed by other engineers in the computer industry. The director also noted that the petitioner did not demonstrate that the petitioner's processes and procedures are significantly different from the methods generally used by other computer companies. The director determined that the petitioner failed to establish that the beneficiary's knowledge is noteworthy or uncommon, or the training received by the beneficiary is different or more advanced compared to training given to all employees with computer experience within the company. Finally, the director noted that the beneficiary's resume has shown that the petitioner's proprietary technology, e2eHub, was rarely utilized by the beneficiary in the assignments she performed with the foreign company.

On appeal, the petitioner asserts that the director's decision is "based on an incorrect understanding of the information submitted and an incorrect application of the regulations." The petitioner provides a description of the petitioner's e2eHub technology, and asserts that the beneficiary has specialized knowledge with this technology. In describing the e2eHub technology, the petitioner asserts:

The "Info-Hub" and application specific "Connectors" are the key components of the e2eHub, which have been developed using C, C++, Java, XML etc. The BPD (Business Process Designer) is the inbuilt tool which allows Analysts, Software Engineers and Designers to translate user requirements/specification into e2eHub Java Objects and 'Processes'. The "Connectors" use a base [company] framework and are customized by the engineers based on the design of each client using business knowledge, C++/Java and e2eHub specific interfaces. The InfoHub, Connectors, BPD and all other components of the e2eHub are proprietary to [the petitioner].

In addition, the petitioner outlines the areas in which the beneficiary possesses specialized knowledge as follows:

- a) Building Connector components for e2eHub clients
- b) Customization of the Infohub by understanding and transforming user requirements to e2eHub proprietary processes, objects and workflow in the e2eHub using BPD
- c) Implementation and customization of Billing Applications, especially Portal Infranet package, using the proprietary [petitioning company] methodology called D-cube Methodology for Telco clients.
- d) Implementation and development of Telcocare, a complete Customer Care package developed by [the petitioner] for Telco clients

As noted above, the petitioner states that the beneficiary's specialized knowledge includes experience with the e2eHub product and the D-cube methodology. The D-cube methodology is not mentioned in the original filing. On appeal, the petitioner submits documents explaining the e2eHub product, and a table of contents of the petitioner's "proprietary D-Cube methodology." The table of contents lists the different phases of the D-Cube methodology. Since the petitioner only submitted the table of contents, the record does not have

detailed information about the D-Cube methodology. In addition, in reviewing the beneficiary's resume, it appears that the beneficiary did not utilize the D-Cube methodology in her work experience with the foreign entity.

On appeal, the petitioner outlines the experience the beneficiary has obtained by reiterating projects the beneficiary was involved in, as stated on her resume. In addition, the petitioner states that the company's product is unique and different from other products used by similar companies in the industry and asserts the following:

e2eHub is an EAI (Enterprise Application Integration) products which is independent of the underlying messaging bus while other EAI vendors have their own proprietary bus... Further, in the EAI industry, all vendors' connectors (or adaptors as they are sometimes called) only work with the vendor's own core engine – that means that connector components developed for one vendor do not work with another vendor's system. That is applicable for the e2eHub too and thus, a software engineer who works in the development of these components and objects needs to have unique technical knowledge and experience with a specific product. The beneficiary has such unique experience and knowledge of the e2eHub, Telcicare and other connector components and applications....

On appeal, the petitioner asserts that the e2eHub is unique, and the petitioner submitted "detailed technical documentation" of the e2eHub product. The petitioner states that the e2eHub is bus-independent which makes it very complex to work with this product. The petitioner asserts that the beneficiary has the unique knowledge and experience required to perform the duties in the United States.

The director stated in his decision that the petitioner "has failed to establish that not only that the e2eHub is a unique technology but also that it will primarily be utilized for the assignment in US." On appeal, the petitioner resubmits the contracts previously submitted in order to demonstrate that the U.S. company has been contracted to provide support services for the e2eHub and its connectors. The petitioner submitted two complete copies of contracts between the U.S. company and two separate companies, and a copy of a renewal contract for a third company.

The petitioner concludes that the new evidence submitted on appeal "persuasively demonstrates that the petitioner has a unique set of products, services and procedures, that the beneficiary has utilized her specialized knowledge in these abroad and that... petitioner's clients have contracted for such skills."

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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 job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Based upon the vague job description of the proposed duties and lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner has repeatedly asserted that the beneficiary will “specifically be responsible for the implementation and customization of [the petitioner’s] proprietary e2eHub software at client sites in accordance with the analysis and design prepared,” however, the petitioner does not establish that the beneficiary must possess knowledge of business processes, procedures and methods of operation that are unique and proprietary to the company in order to implement, customize, and modify the software package. There is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that her level of knowledge is comparatively “advanced.” The beneficiary’s resume lists only specific projects in which she has participated in order to modify, implement, maintain and update the software, but does not mention any experience in the development of internal policies or procedures. Again, simply going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to software engineering positions within the U.S. company are different from those applied for other companies providing Enterprise Application Integration (EAI) services. In addition, the petitioner has not explained how the knowledge of the petitioner’s e2eHub computer system amounts to specialized knowledge, particularly since the system is built upon C, C++, Java, XML computer languages, all of which are commonly used by computer programmers and system administrators in the industry. While individual companies will develop a computer system and methodologies tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company’s processes and quality standards would amount to “specialized knowledge.”

As noted above, on appeal, the petitioner asserts that the e2eHub is unique and the petitioner submitted a “detailed technical documentation” of the e2eHub product. The petitioner states that the e2eHub is bus-independent which makes it very complex to work with this product. In addition, the petitioner explains that the connectors “only work with the vendor’s own core engine – that means that connector components developed for one vendor do not work with another vendor’s system,” and thus the software engineer needs to have a unique technical knowledge and experience in the specific product. However, the petitioner also explains that in the Enterprise Application Integration industry, all vendors’ connectors only work with the vendor’s own core engine. Thus, it appears that every software engineer in the Enterprise Application Integration industry would need to learn how to customize the connectors to each individual customer. The petitioner has not explained how the petitioner’s customization process differs from the customization process of other companies in the industry. 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)).

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted her with the claimed “advanced” knowledge of the company’s processes, procedures and methodologies. In the request for evidence, the director specifically requested that the petitioner submit documentary evidence which would establish that the beneficiary possessed specialized knowledge above

that which is normally possessed by other software engineers employed by the foreign organization. In its response, the petitioner submitted a letter from the managing director of the foreign company stating that the beneficiary has completed three training courses, however, the petitioner did not indicate the length of time it took to complete these on-the-job training courses. Without specific information of the training courses completed by the beneficiary at the foreign company, the AAO cannot determine if this training provided the beneficiary with an advanced knowledge or if it is reasonable to believe that a software engineer with a background in related technologies may learn the company's e2eHub technology with minimum training.

In addition, the petitioner did not submit any documentation to evidence that the beneficiary received additional training that was not provided to other software engineers employed by the foreign company. The petitioner did note that not all of its engineers are trained in the e2eHub technology. However, as noted above, the beneficiary's resume indicates that she began working on e2eHub projects in January 2001, only six months after commencing her employment with the foreign company, and nearly two years prior to completing the petitioner's e2eHub training courses, which undermines the claim that only certain engineers are selected to work on the e2eHub projects. Further, the petitioner claims to have 27 employees worldwide, but in the list of clients submitted with the petition, the petitioner lists 26 e2eHub customers. This raises questions as to how only a few of the petitioner's employees are trained in the e2eHub product when the petitioning company has 26 clients that utilize the e2eHub product. In addition, the petitioner indicated that the foreign and U.S. company use contractors to work on their projects. It is implausible that the contractors receive significant training before carrying out their duties which raises the question if the beneficiary's position actually requires a knowledge that goes beyond the knowledge held by software engineers in the field. Thus, the AAO cannot conclude that the beneficiary has an "advanced knowledge" of the petitioner's proprietary software over and above from other employees of the petitioner or other employees in the computer industry.

As noted above, on appeal, the petitioner states that the beneficiary's specialized knowledge includes experience with the e2eHub product and the D-cube methodology. The D-cube methodology is not mentioned in the original filing. On appeal, the petitioner submits documents explaining the e2eHub product, and a table of contents of the petitioner's "proprietary D-Cube methodology." The table of contents lists the different phases of the D-Cube methodology. Since the petitioner only submitted the table of contents, the record does not have detailed information about the D-Cube methodology. In addition, in reviewing the beneficiary's resume, it appears that the beneficiary did not utilize the D-Cube methodology in her work experience with the foreign entity. Since the D-Cube methodology was not discussed prior to the director's decision, it appears that the petitioner is attempting to expand the beneficiary's claimed specialized knowledge on appeal. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of specialized knowledge, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial, executive or specialized knowledge position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

As noted above, on appeal, the petitioner submitted two complete copies of contracts between the U.S. company and two separate companies, and a copy of a renewal contract for a third company, in order to

demonstrate that the U.S. company has been contracted to provide support services for the e2eHub and its connectors. In reviewing the contracts, it appears that the U.S. company will provide support services to the companies, however, the contract does not specifically mention support service with the e2eHub and its connectors. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired specialized knowledge as defined in the statute and regulations.

The AAO does not dispute the likelihood that the beneficiary is a software engineer who understands the petitioner's e2eHub technology and is able to apply it within the context of the petitioner's specific environment. However, it is 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 *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.

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 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*.

It should be noted that 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. at 15. 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 the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

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

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

The record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other software engineers. The petitioner has not established that the beneficiary has received extensive training or has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have "advanced" knowledge of the company's business processes, procedures and methodologies, as well as "specialized knowledge" in the intricate software created by and utilized by the company. However, as the petitioner has failed to document any specific training other than the three courses completed, or otherwise describe or document the purported knowledge, these claims are not persuasive. 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)). Without this information, the AAO has no basis to compare the beneficiary's knowledge to that of other workers within the company, and therefore it can not be concluded that her knowledge is "advanced." There is no indication that the beneficiary has any knowledge that exceeds that of any experienced software engineer, or that she has received special training in the company's methodologies or processes which would separate her from any other similarly employer worker with the foreign company. However, notwithstanding the lack of documentation, 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.

The petitioner noted that the beneficiary obtained her specialized knowledge by working with the foreign company. Specifically, the petitioner asserted the following:

In the United States, most new hires do possess general Java and EAI skills but do NOT possess specific knowledge of the USA product e2eHub as such knowledge is only imparted through formal training from within USI [the petitioner]. As an example, with reference to the US company's organizational chart enclosed, Ying Moy does NOT possess such e2eHub knowledge while Manjunatha Subbarya does possess it. However, Manjunatha acquired the e2eHub knowledge through the formal training imparted to him by [the petitioner] through his prior employment by USI India. Similarly, [the beneficiary] has this unique knowledge of [the petitioner's] products and services which cannot be found with other software engineers in U.S. unless they have been employed with USI.

In making this statement, the petitioner implies that its India-based staff possess an entirely separate body of knowledge that rises to the level of "specialized" or "advanced."

If the AAO were to follow the petitioner's reasoning, then any employee who had worked as a software engineer with the parent company for a number of years 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 asserts that it would be impossible to train U.S. workers to perform the duties to be undertaken by the beneficiary and other L-1B workers. This assertion is not substantiated by documentary evidence.

The AAO does not dispute that the petitioner's organization, like any computer software company, has its own internal information systems processes 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 her 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 her from any other similarly employed software engineer within the petitioner's group or within the petitioner's 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.

In sum, the beneficiary's duties and technical skills, while impressive, 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 insurance companies. The AAO does not dispute the fact that the beneficiary's knowledge has allowed her to successfully perform her job duties for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a "key personnel," nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

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

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

ORDER: The appeal is dismissed.