U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 04 114 52909 Office: VERMONT SERVICE CENTER Date: MAY 10 2007

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of technical consultant as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims that it is a subsidiary of [redacted] located in India. The petitioner states that it is an information technology business. The petitioner seeks to employ the beneficiary for a three-year period.

The director denied the petition on April 12, 2004, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel contends that the decision is "arbitrary, capricious, and an abuse of discretion," and that Citizenship and Immigration Services (CIS) improperly applied the appropriate statute and regulation to the evidence in its denial of the petition. Counsel for the petitioner states that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in two legacy Immigration and Naturalization Service (INS) memoranda. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo"). Counsel asserts that the beneficiary qualified under the Puleo memo as the petitioner manufactures a "proprietary technology product," and the beneficiary is "familiar with the procedures in the use and service of the product," which enhances the petitioner's productivity and financial position, and the knowledge can only be gained through the employment with the petitioning company. Counsel also states that the beneficiary possesses the petitioner's proprietary technology and its "application to its client's internal systems." Counsel further asserts that the director erred in stating that the petitioning company is a consulting company since it is primarily a "developer of information technology products and customized services." Counsel cites to a previous decision where the AAO approved L-1B status for a technical consultant for the petitioning company. Counsel submits a brief and additional documentation in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

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

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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

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

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

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

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

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

The petitioner filed the instant nonimmigrant petition on March 10, 2004, indicating that the beneficiary would be employed in the United States as a technical consultant. In a support letter dated March 3, 2004, the petitioner stated that it wishes to transfer the beneficiary to the United States "utilizing his specialized knowledge of [the petitioner's] proprietary software to assist in the development of our client's Record Keeping System." The petitioner also indicated the company's business activities as the following:

> The company's professional staff of over 1800 information technology professionals is engaged in the design and development of both proprietary and customized information technology systems to support the global banking and financial operations of leading international banking and financial organizations, as well as the development and marketing of specialized software products for the banking and financial services industry, including its flagship product, FLEXCUBE™, the company's proprietary banking system software. FLEXCUBE is the choice of more than 170 financial institutions worldwide. [The petitioner] also offers financial institutions customized solutions through its domain and technology Centers of Excellence, which encompass areas such as Business Intelligence, CRM, e-services, Integration Services, Insurance and Payment Systems. The company's technical consultants utilize [the petitioner's] solutions' proprietary project management and information systems methodologies PROMOTOR™ and PrimeSourcing, as well as [the petitioner's] solutions' proprietary project and process database, "QuBase".

The petitioner described the duties to be performed by the beneficiary in the United States, and his qualifications to fill the position, as the following:

> In this position [technical consultant], he will be engaged in the continued development and implementation of the Record Keeping System for our client, Princeton Financial Systems Inc., at their offices in Princeton, NJ. [The beneficiary] has been engaged in the development of this system in India, and where he has utilized his knowledge of [the petitioner's] proprietary banking systems software, including PROMOTOR™ and PrimeSourcing™, in the development and implementation of this system. [The beneficiary] will review Princeton's current record system for completeness and adequacy and apply [the petitioner's] PrimeSourcing™ methodology to improve functionality of current system. The Record Keeping System uses [the petitioner's] proprietary software and project management information systems, including PROMOTOR™ and PrimeSourcing™, in conjunction with Princeton Financial Systems Inc.'s corporate audit and compliance testing standards, software platforms and security management systems.
>
> [The beneficiary] is well qualified to assume this specialized knowledge position with our organization. [The beneficiary] has been employed by [the foreign entity], in November 2001, and has held the position of Technical Consultant since then. As Technical Consultant, [the beneficiary] has been engaged in the development and implementation of the company's software systems and products using [the petitioner's] PROMOTOR™ and PrimeSourcing proprietary project management and information systems software methodologies and protocols. During this period, he has also been engaged in the development and implementation of Princeton Financial Systems Inc. information technology systems including Princeton Financial Systems Inc.'s Record Keeping Systems using PROMOTOR™ and PrimeSourcing in conjunction with Princeton Financial Systems Inc.'s corporate audit and compliance testing standards, software platforms and security management systems. In his capacity as Technical Consultant,

> [the beneficiary] has been involved in the design, development, and documentation of functions specifications and software modules of these proprietary software products, including responsibility for the documentation of technical design specifications and the diagnostic and evaluation testing of quality assurance and audit control software requirements.
>
> [The beneficiary] holds a Bachelor of Commerce degree from the University of Calcutta in India. Throughout two years of employment with [the foreign entity], [the beneficiary] has developed advanced and proprietary knowledge of [the petitioner's] products, software, management information systems, and specifications, as well as their application to our client's systems, which will assist the company's competitive position. He possesses knowledge of [the petitioner's] methods of operations, including activities with respect to client service, as well as an advanced and in-depth understanding of all aspects of the international commodities markets and structures. Through his experience with [the petitioner], [the beneficiary] has developed expertise in the business models and software and systems requirements of [the petitioner's] clients. He possesses knowledge and skills that are highly developed and complex, and that are not readily available in the United States market. The fact that he has been engaged in the development of the Record Keeping System at [the foreign entity] makes his knowledge of our company and our client's requirements truly specialized.

The petitioner also submitted a letter from the foreign company confirming the beneficiary's employment as a technical consultant since November 2001, and copies of pay statements issued to the beneficiary from the foreign company from August 2003 until January 2004. In addition, the petitioner submitted the petitioning company's annual report for 2002 – 2003.

The director issued a request for additional evidence on March 19, 2004, stating that the record does not show that the beneficiary possesses specialized knowledge. The director requested: (1) an explanation as to whether the beneficiary participated on the same project he would work on in the United States, including the length of time, the specialized knowledge acquired when working on this project, and a contract or personnel records evidencing the beneficiary worked on this assignment; (2) a copy of the beneficiary's resume; (3) evidence verifying that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by others in the beneficiary's field or in the industry, or evidence that the beneficiary's advanced level of knowledge of the company's processes and procedures distinguishes him from those with elementary or basic knowledge; (4) evidence that the beneficiary possesses knowledge that is not commonly held throughout the industry but that is truly specialized or advanced, which may include knowledge that is valuable to the employer's competitiveness in the marketplace; and/or that he is qualified to contribute to the petitioner's knowledge of foreign operating conditions; (5) confirmation that the beneficiary has been utilized abroad on significant assignments that have enhanced the employer's productivity, competitiveness, image, or financial position, and that the knowledge possessed by the beneficiary can only be gained through prior experience with the foreign employer; (6) verification that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; (7) the number of L-1B nonimmigrant workers employed in the United States, including a brief job description for each

employee; (8) an explanation as to the manner in which the beneficiary has gained his specialized knowledge, including the total length of any classroom or on-the-job training courses completed and the minimum amount of time required to train a person to work in the position the petitioner is seeking to fill; and, (9) a statement discussing the type of training, both formal education and in-house training, needed for an individual to be able to adequately perform the duties of the proposed position, and the number of employees who have received such training.

The petitioner responded in a letter dated April 8, 2004. Counsel contended that the director's request for additional evidence was misplaced and erroneous and that the petitioner had previously submitted ample evidence with the initial petition that established the beneficiary's specialized knowledge. Counsel further asserted that the current standard for the interpretation of specialized knowledge is outlined in two legacy INS memoranda. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo"). Counsel stated that the Puleo memo instructs CIS "that the statutory and regulatory definitions are less stringent than the previous standard of proprietary knowledge." Thus, counsel asserted that the beneficiary has specialized knowledge since it has reached the higher standing of "proprietary knowledge of the company's products and services." Counsel also stated that the beneficiary's knowledge of the "proprietary technology and its applications to banking requirements cannot be replicated easily to another individual." Furthermore, counsel reviewed the intent of the statute and stated the director erred by reading such a strict interpretation of the regulations and statute.

The petitioner failed to submit documentation requested by the director such as documentation regarding the training required to fill the position of technical consultant and information regarding similarly employed individuals by the petitioning company. 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 director denied the petition on April 12, 2004, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge. The director noted that the beneficiary's knowledge of the petitioner's proprietary products, without any other documentation, is not sufficient to establish that the beneficiary possesses specialized knowledge. The director noted that if the regulations were intended to be interpreted so broadly, any individual who has knowledge of a company's proprietary products will qualify for L-1B classification. The director also stated that the petitioning company does not develop its own software products, and the beneficiary "did not take part in the development" of the petitioner's proprietary products as described in the petition. The director noted that the beneficiary's duties do not appear to be significantly different from those of any other programmers employed by the petitioner, or different from the duties performed by other programmers in the computer industry. The director further stated that all programmers hired by the petitioner must undergo a three-month training course and therefore the training program is not specialized since it is offered to all programmers and not a select few who will obtain an advanced or specialized knowledge.

On appeal, counsel contends that the decision is "arbitrary, capricious, and an abuse of discretion," and that CIS improperly applied the appropriate statute and regulation to the evidence in its denial of the

petition. Counsel for the petitioner states that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in two legacy INS memoranda. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994)("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)("Ohata Memo"). Counsel states that the beneficiary qualified under the Puleo memo as the petitioner manufactures a "proprietary technology product," and the beneficiary is "familiar with the procedures in the use and service of the product," which enhances the petitioner's productivity and financial position and can only be gained through the employment with the petitioning company. Counsel also asserts that the director erred in stating that the petitioning company is a consulting company since it is in fact foremost a "developer of information technology products and customized services." Counsel states that the director included facts that were not in the record such as the petitioning company provides a three-month training program to all of its employees. Counsel states, "nowhere in this petition is the length of any training program discussed." Counsel cites to a previous decision where the AAO approved L-1B status for a technical consultant for the petitioning company.

On review, the petitioner has not demonstrated that the beneficiary would be employed in the United States organization in a specialized knowledge capacity. In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

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

The petitioner has repeatedly asserted that the beneficiary possesses knowledge of the petitioner's proprietary products such as PROMOTOR™ and PrimeSourcing, and QuBase, and thus the beneficiary possesses specialized knowledge. According to the petitioner's support letter dated March 3, 2004, it appears that once the beneficiary commenced his employment with the foreign company, he immediately began working as a technical consultant "engaged in the development and implementation of the company's software systems and products." This fact provides further evidence that the petitioner does not utilize a proprietary system that greatly differs from the systems used by technical consultants in the information technology industry since the beneficiary immediately began working with the petitioner's products upon commencement of his employment with the petitioner. Thus, the AAO cannot conclude that the beneficiary has an "advanced knowledge" of the petitioner's proprietary software over and above from other employees of the petitioner or other employees in the computer industry.

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. In the request for evidence, the director specifically requested that the petitioner submit documentary evidence to establish that the beneficiary possessed, specialized knowledge above that which is normally possessed by other technical consultants employed by the foreign organization. The petitioner failed to submit this documentation in its response. 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). Without specific information of the training courses completed by the beneficiary at the foreign company, if any, the AAO cannot determine if this training provided the beneficiary with an advanced knowledge or if it is reasonable to believe that a technical consultant with a background in related technologies may learn the petitioning company's specific project methodologies and processes with little to no training. The AAO withdraws the director's statement in its denial decision asserting that the petitioner provides a three month training course to its technical consultants. In reviewing the record, there is no information regarding a three month training course and thus the AAO will withdraw this specific statement made by the director in her decision.

In addition, the petitioner did not submit any documentation to evidence that the beneficiary received additional training that was not provided to other technical consultants employed by the foreign company. The petitioner did note that the beneficiary has worked with the U.S. client on the same project and his experience and knowledge of the client's requirements are "truly specialized." Knowledge related to a specific clients' project cannot be considered "specialized knowledge" specific to the petitioning company. The beneficiary's familiarity with the U.S. clients' project requirements is undoubtedly valuable to the petitioner, but this knowledge alone is insufficient to establish employment in a specialized knowledge capacity. If the AAO were to follow the petitioner's logic, any technical consultant who had worked on a client project team within the petitioner's organization would be considered to possess "specialized knowledge."

Counsel repeatedly asserts that the beneficiary possesses specialized knowledge due to the nature of the petitioner's "proprietary technology product." The petitioner did not submit evidence describing in detail the petitioner's proprietary products and how they differ from other information technology products utilized by the banking industry. Despite the director's request for evidence, the petitioner failed to submit any evidence to establish the purported proprietary nature of the petitioner's "proprietary technology product" or that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by others in the beneficiary's field or in the industry. Mere assertions are not enough to meet the petitioner's burden of proof. 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.

Contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to technical consultant positions within the U.S. company are different from those applied for other companies providing software development and consulting services to the banking industry. Moreover, there is no evidence on record to suggest that the computer programming processes pertaining to the banking industry, specifically, are different from those applied for any computer programming position. While individual companies will develop a computer system tailored to its own

needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

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

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). As noted previously, although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the AAO finds that the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision noted that the House Report was silent on the subject of specialized knowledge, but that

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[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.*

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

The beneficiary's job description does not distinguish his knowledge as more advanced or distinct among other technical consultants employed by the foreign or U.S. entities or by other unrelated companies. The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990).[2] 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*

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

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

H.R. REP. No. 101-723(I), 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418.

College Dictionary 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Further, the Puleo memo cited by counsel allows CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." *Memo, supra*. A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

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

The AAO does not dispute that the petitioner's organization 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 his

peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the claimed "advanced knowledge." The petitioner has not submitted sufficient documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures, and methodologies would differentiate him from any other similarly employed software analyst/programmer within the petitioner's group or within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165.

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

In sum, the evidence indicates that the beneficiary's duties and technical skills are based on knowledge that is common among computer systems professionals working in the beneficiary's specialty in the information technology field. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large information technology consulting companies. The AAO does not dispute the fact that the beneficiary's knowledge has allowed him to successfully perform his job duties for the 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 petitioner noted that CIS approved other petitions that had been previously filed on behalf of the petitioner for other employees. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat

acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Furthermore, the fact that the AAO may have approved a previous petition filed by the petitioner will not establish eligibility in the present matter. It must be emphasized that each petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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

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

ORDER: The appeal is dismissed.