

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

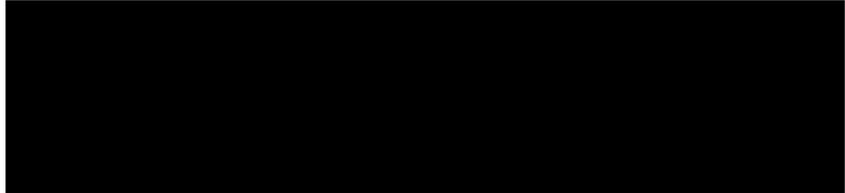
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

b7



File: EAC 07 188 53173      Office: VERMONT SERVICE CENTER      Date: NOV 30 2007

IN RE: Petitioner:  
Beneficiary:



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

IN 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, Vermont Service Center, denied the petition for a nonimmigrant visa and certified the matter to the Administrative Appeals Office (AAO) for affirmation or *withdrawal pursuant to 8 C.F.R. § 103.4(a)*. Upon review, the AAO will affirm the director's decision and will further deny the petition for the additional reasons set forth below.

The petitioner filed this nonimmigrant petition on June 18, 2007 seeking to employ the beneficiary in the position of "programmer analyst – insurance vertical" 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 software development and consulting company and seeks to employ the beneficiary for a period of three years.

On October 10, 2007, the director denied the petition and certified the matter to the AAO. The director concluded that the petitioner failed to establish (1) that the beneficiary was employed abroad in a specialized knowledge capacity; or (2) that the beneficiary will be employed in the United States in a specialized knowledge capacity.

Upon certification, the director informed the petitioner in the Form I-290C that it may file a brief or written statement with the AAO within thirty days after service of the decision. As of the date of this decision, no brief or written statement has been received by the AAO and the record will be considered complete.

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) 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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii) and (iv).

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 describes the beneficiary's current and proposed job duties and purported specialized knowledge in a letter dated June 14, 2007 appended to the initial petition. The petitioner indicates that the beneficiary has been working in India, and will work in the United States, on an ongoing "Quote Rate and Issue," or QRI, enhancements project (hereinafter, the "QRI Enhancement Project") for Travelers Indemnity Company (hereinafter the "unaffiliated employer"). The beneficiary has been employed by the foreign employer since March 2005 and, as explained in an appended letter dated April 4, 2007, has been working on this specific project offshore since January 2006.

The petitioner specifically described the QRI Enhancement Project on page 3 of the June 14, 2007 letter. Generally, the project is described as maintaining and enhancing the unaffiliated employer's applications systems as these pertain to the issuance of certain commercial insurance policies. The petitioner also described the beneficiary's proposed duties as these relate to the QRI Enhancement Project as follows:

As Programmer Analyst on [the QRI Enhancement Project] in the U.S., [the beneficiary] will analyze the internal systems currently used at [the unaffiliated employer]. To this end, he will serve as the key liaison between India and the U.S. and will utilize analytical tools and methodologies to assess the requirements for system maintenance in the United States as developed by our offshore development center, [the foreign employer]. [The beneficiary] will apply his advanced knowledge of our Indian subsidiary's proprietary software tools and quality assurance standards and procedures to maintain and enhance our U.S. client's computer applications in accordance with our quality control standards and business practices

and procedures.

Specifically, [the beneficiary] will continue his work on the [QRI Enhancement Project], and to his end, he will transfer business rules into technical architecture. [The beneficiary] will be responsible for system maintenance and enhancement of CL Portal, IENET application and IEXML application that exist with the [QRI Enhancement Project]. [The beneficiary] will perform job classification and subsequently assign the tasks accordingly. He will use Microsoft Visual Studio .net 2003 for enhancement of the existing system, Microsoft Office for the documentations of the different processes carried out and VSS for the version control of the documents. He will further perform maintenance work on portal using databases like DB2 server for maintenance of the data[.] [The beneficiary] will closely monitor the latest status against each log, and pending status. [The beneficiary] will be responsible for system testing, quality assurance and final implementation. He will utilize a host of Internal tools that include E-tracker for Application Value Management, E-Metrics to collect, consolidate and analyze project metrics, and assist in the efficient calculation of quantifiable project specifications, E-Cockpit, to graphically represent quantifiable project data and assists in decision support and project management, Q-View for quality assurance, and Q-Smart to automate quality assurance through powerful built-in workflow mechanisms.

More importantly [the beneficiary] will utilize his professional experience and advanced knowledge of the different systems in the [QRI Enhancement Project]. This knowledge will be an asset to the client since he became acquainted with these systems during the initial Knowledge transitions phase. [The beneficiary] has been identified as the key person on this project. His knowledge of the quality procedures and practices in [the petitioning organization] is also seen as an essential advantage for [the petitioning organization] and the client.

The petitioner described the beneficiary's purported specialized knowledge as it pertains to his duties, and the QRI Enhancement Project, in the letter dated June 14, 2007 as follows:

[The beneficiary] has worked on the [QRI Enhancement Project] and has been instrumental in the development of their application components. [The beneficiary] has acquired [unaffiliated employer] business product and technical process knowledge that can only be attained through developing the company's information technology and is thereby neither common nor basic knowledge. He worked on design, development, and testing during the development phases of the [QRI Enhancement Project] and hence has acquired the business knowledge of the project for future leveraging during the upcoming implementation, modification, and enhancement phases of the project. [The beneficiary] is very familiar with the different systems used in this project and his technical expertise is an asset to both [the unaffiliated employer] and [the petitioning organization].

[The beneficiary] earned a Bachelor[']s degree in Computer Science from [REDACTED] University in India. His unique combination of professional experience with [the unaffiliated

employer] practical and educational expertise cannot be transferred or taught to other candidates. His concentrated focus on the development and implementation of this client's technology cannot be passed on to another candidate due to the intense and lengthy time period required for acquaintance with [the unaffiliated employer's] business processes and related technology. [The beneficiary] was introduced to [the petitioning organization's] Insurance vertical and its projects in March 2005 and has subsequently worked exclusively on projects like [the QRI Enhancement Project]. [The unaffiliated employer's] QRI Application is a highly sophisticated and complex system that requires consistent monitoring and analysis of system components that must operate in cohesion. [The unaffiliated employer's] QRI Application operates via a variety of hardware and software platforms that often require the regular exchange of application critical data.

[The beneficiary] has utilized a host of internal tools for [the unaffiliated employer's] projects. These include eCockpit, Icare, Qsmart, eTracker, eMetrics and Qview. He has broader industry knowledge of Visual Studio .net 2003, Visual Studio 6.0 and SQL Server 2000; he is a Microsoft Certified Application Developer, and has specific expertise with [the unaffiliated employer's] different Applications. His business knowledge is noteworthy, distinguishable and very uncommon and his resulting expertise spans across data collection methodologies, hardware and software development, data processing, and systems analysis. [The beneficiary] has specialized knowledge of systems in [the unaffiliated employer's] QRI Enhancements and he has been critical in the development of all the previously mentioned systems. This is highly specific and advanced knowledge that [the petitioning organization] would like to utilize in its implementation in the United States.

[The beneficiary] was chosen to come to the United States based on his professional experience with [the unaffiliated employer] and [the petitioning organization]. He developed an advanced understanding of [the petitioning organization's] proprietary internal development tools, worked on several key projects for [the petitioning organization] abroad and as a result of his work on significant projects for [the unaffiliated employer]; he is uniquely well-versed in [the petitioning organization's] Onsite/Offshore implementation methodology. [Citation omitted]. The specific leveraging of our internal tools in the development of applications is based on the beneficiary's professional, technical and educational knowledge. [The beneficiary] has shown his ability to develop application modules and utilize our internal tools and this means that he is ideal for transfer to the U.S. since he has acquired a well-honed understanding of the type of technological information that must be gleaned from the U.S. client in order to maximize effective implementation. Specifically, [the beneficiary] displayed his advanced expertise through his focus on [the QRI Enhancement Project].

Furthermore, the petitioner explained in the letter dated June 14, 2007 that the beneficiary "has acquired specialized knowledge of the technologies required for the application development and maintenance of [the QRI Enhancement Project]" and that the beneficiary has specialized knowledge of the petitioning organization's "proprietary technologies." These proprietary technologies are described by the petitioner as

follows:

These are the proprietary systems that [the petitioning organization] uses to implement projects for [its] clients. They include eMetrics, an online tool used to collect project measurements and progress and calculate metrics based on this information, Icare, a system for logging complaints and problems regarding a particular support system, eCockpit, a tool to measure and represent Productivity, Effort, Schedule, Requirements and defect density, and software quality assurance tools such as Qview and Qsmart, to view project activities. These tools, developed by and used exclusively for, [the petitioning organization] projects, are resources that allow two implementation teams – separated by thousands of miles and several time zones – to work together seamlessly and move forward on the same client project.

\* \* \*

[The beneficiary] has also developed a unique understanding of [the petitioning organization's] Onsite/Offshore Methodology. He served in the Offshore Team and has contributed to [the petitioning organization's] most significant projects. He became extremely well versed in the procedures and protocols integral to [the petitioning organization's] Onsite/Offshore methodology. His substantial role in the project described above translates into specialized experience with the workflow, procedures and standards followed by [the petitioning organization's] Indian teams for processing information from client sites in the U.S. and creating and implementing applications remotely. This provides him with a unique perspective on what information the team in the U.S. will need to gather from the U.S. client and forward to the Indian team for optimal and efficient results on a particular project. This depth of knowledge of [the petitioning organization's] offshore operations will provide the [the petitioning organization] with a definite competitive advantage in managing this project, as well as the client's expectations, in the U.S.

On June 29, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence establishing the minimum amount of time required to train an employee to perform the beneficiary's duties in the United States; documentation addressing the manner in which the beneficiary gained his purported specialized knowledge, including training records, coursework records, and certifications; and evidence addressing the number of workers employed by the petitioning organization in positions similar to the beneficiary's current and prospective position.

In response, the petitioner submitted a letter dated September 21, 2007. In this letter, the petitioner explains that the petitioning organization "employs around twenty six Programmer Analysts offshore and four onsite in the U.S. at the client location" and that "[b]efore being able to join this particular project in a Programmer Analyst role each employ[ee] must go through multiple internal training sessions in the technical mainframe skills set, as well as participate in knowledge transition sessions and related case studies."

The petitioner also describes the beneficiary's acquisition of his purported specialized knowledge as follows:

[The foreign employer] has employed [the beneficiary] in a specialized knowledge capacity since March 2005. He has spent much of his entire [foreign employer] career working in the narrow field of this particular [unaffiliated employer] project, during which time he has gained in-depth knowledge that is not generally known within [the petitioning organization], and certainly not available outside of [the petitioning organization] in the industry. Indeed, because his knowledge surpasses the usual found within [the foreign employer], [the petitioning organization] seeks to transfer [the beneficiary] onsite so that he may help the offshore and onsite team collaborate more closely on this specific [unaffiliated employer] project.

The petitioner further claims that the beneficiary acquired his "specialized knowledge" in two ways: (1) through working offshore on the QRI Enhancement Project; and (2) through formal training. The petitioner asserts that the beneficiary's knowledge of the QRI Enhancement Project "differs substantially from what is generally known within [the petitioning organization]" and that he is part of a "sub-set" of workers having a "combination of special knowledge, and its application in the onsite team in the U.S." Moreover, the petitioner asserts that the beneficiary's knowledge of the petitioning organization's process and procedures also distinguishes him from other employees.

Finally, the petitioner outlines the beneficiary's formal training regimen. As explained above, the record indicates that the beneficiary began working for the foreign employer in March 2005 and commenced working on the offshore component of the QRI Enhancement Project in January 2006. The instant petition was filed on June 18, 2007. During his approximately 28 months of employment by the petitioning organization, the beneficiary received 164 hours of training. One hundred and forty-four hours of this training was received during the beneficiary's first 9 months of employment in 2005, and these courses appear to have concerned primarily widely used software or general methodologies of the petitioning organization. Twenty hours of general training relating to the "foundation of insurance" was received by the beneficiary in early 2006. Almost half of the beneficiary's training (80 hours) concerned asp.net, which is described by the petitioner as "methodology and best practices for computer software components that can be used by programmers to develop web applications." However, asp.net is not listed elsewhere in the petition as a subject of which the beneficiary has specialized knowledge. Furthermore, of all the "proprietary technologies" listed in the letters dated June 14, 2007 or September 21, 2007, the beneficiary appears to have received formal training in only one – eTracker – for 4 hours in November 2005.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary had been employed abroad, or will be employed in the United States, in a specialized knowledge capacity as defined 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). The petitioner must submit a detailed job description of the services performed, or to be performed, sufficient to establish specialized knowledge. In this matter, the petitioner fails to establish that either the foreign or United States position requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's prospective position requires "specialized knowledge" and that the beneficiary has been employed abroad in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced and educated workers employed by the petitioning organization or in the industry at large. 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary possesses specialized knowledge of the systems and technologies required for the development and enhancement of the QRI Enhancement Project. The petitioner also asserts that the beneficiary possesses specialized knowledge of the petitioning organization's "Onsite/Offshore Methodology" as well as of the "proprietary technologies" used to implement the petitioning organization's projects. The petitioner alleges that the beneficiary's knowledge was acquired through formal training and working on the QRI Enhancement Project abroad and that "[h]is concentrated focus on the development and implementation of [the unaffiliated employer's] technology cannot be passed on to another candidate due to the intense and lengthy time period required for acquaintance with [the unaffiliated employer's] business processes and related technology." The petitioner asserts that the beneficiary is part of a "sub-set" of workers having a combination of specialized knowledge which "spans across data collection methodologies, hardware and software development, data processing, and systems analysis."

However, despite these assertions, the record does not establish how, exactly, the beneficiary's knowledge of the QRI Enhancement Project or the petitioning organization's "proprietary technologies" is so materially different from software development and implementation projects in general that a similarly experienced and educated software professional employed by the petitioning organization or in the industry at large could not perform the duties of the position. The petitioner never establishes what specific knowledge of the QRI Enhancement Project or the petitioning organization's "proprietary technologies" would require an "intense and lengthy time period" to convey to a similarly trained and experienced software professional. In fact, the petitioner fails to specifically define this "intense and lengthy time period." It is unclear what specific knowledge would need to be imparted during the "intense" experience or how long this experience would need to last to fully impart the knowledge. Therefore, the petitioner has not established that the beneficiary's knowledge is noteworthy or uncommon, and not possessed generally by similarly educated and experienced software professionals.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by software professionals generally throughout the industry or by other employees of the petitioning organization. The fact that no other employee possesses very specific knowledge of certain aspects of the QRI Enhancement Project, or of certain proprietary technologies as these relate to the project's implementation, does not alone establish that the beneficiary's knowledge is indeed uncommon or

noteworthy. All employees can be said to possess unique and unparalleled skill sets to some degree; however, a unique skill set that can be imparted to another similarly experienced and educated employee without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's technologies or project do not establish that any knowledge of the QRI Enhancement Project or the "proprietary technologies" is "specialized." Rather, the petitioner must establish that qualities of the unique or proprietary technologies, or of the QRI Enhancement Project, require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other professionals may not have very specific, proprietary knowledge regarding the QRI Enhancement Project or of the petitioner's "proprietary technologies" is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, similarly experienced employee after a few weeks of on-the-job instruction. As the record is devoid of evidence establishing how long, and under what conditions, the purported specialized knowledge would be imparted to similarly educated and experienced employees, the petitioner has failed to establish that the beneficiary's knowledge is, or will be, truly specialized.

Furthermore, while the petitioner asserts that the beneficiary acquired his purported "specialized knowledge" through both work experience and formal training, the record is not persuasive in establishing that either of these methods truly imparted "specialized knowledge" to the beneficiary. First, as explained above, the record is devoid of persuasive evidence establishing that the beneficiary's experience with the QRI Enhancement Project abroad instilled him with specialized knowledge. The petitioner fails to explain what specific knowledge of the QRI Enhancement Project is unique to the beneficiary or to establish how long it would take to impart this knowledge to a similarly employed person and under what conditions.

Second, the record is not persuasive in establishing that the 164 hours of "formal training" provided to the beneficiary during his first eleven months of employment imparted specialized knowledge to the beneficiary. The training regimen outlined by the petitioner does not appear to relate specifically to the beneficiary's purported specialized knowledge. Only one course, a 4-hour course pertaining to eTracker, appears to directly concern one of the "proprietary technologies" listed in the training outline. Likewise, the beneficiary appears to have taken only one course relating tangentially to the QRI Enhancement Project – a 20-hour course pertaining to the insurance industry. The remaining 140 hours of training appear to concern general topics relating to widely used software and the petitioning organization's methodologies, none of which are listed as subjects of which the beneficiary has "specialized knowledge." Regardless, absent evidence establishing that the knowledge imparted by the training sessions is not possessed by other similarly employed workers, knowledge of these subjects would not be specialized. In this matter, as the petitioner indicates that "each employ[ee] must go through multiple internal training sessions in the technical mainframe skills set," it appears that such training sessions, and the resultant knowledge imparted, is common throughout the petitioning organization. In addition, as the petitioner has indicated that it employs approximately 30 "programmer analysts" in the QRI Enhancement Project, it appears unlikely that the beneficiary's knowledge or training regimen is truly uncommon or noteworthy.<sup>1</sup>

---

<sup>1</sup>While neither the Act nor the regulations mandate a certain amount of training for imparted knowledge to be "specialized," it must be noted that, even if the knowledge imparted to the beneficiary during his training sessions related primarily to his purported "specialized knowledge" (which it did not), the beneficiary's

Finally, even assuming that the beneficiary has "specialized knowledge" as defined by the Act and regulations, the petitioner has failed to establish that the beneficiary was employed in a specialized knowledge capacity abroad for at least one year. 8 C.F.R. § 214.2(l)(3)(iv). The petitioner alleges in the letter dated September 21, 2007 that "[the foreign employer] has employed [the beneficiary] in a specialized knowledge capacity since March 2005," which is when the beneficiary first became employed by the petitioning organization. However, this assertion is neither credible nor consistent with other allegations in the record. As indicated above, the petitioner asserts that the beneficiary has "specialized knowledge" of aspects of the QRI Enhancement Project and of certain "proprietary technologies" of the petitioning organization. The petitioner further asserts that this knowledge can only be gained after an "intense and lengthy time period" during which time an employee would become acquainted with the unaffiliated employer's "business processes and related technology." Finally, the petitioner asserts that the beneficiary gained his specialized knowledge in two ways: (1) through working offshore on the QRI Enhancement Project; and (2) through formal training. Therefore, if the beneficiary gained his specialized knowledge through a combination of experience and training available only during his period of employment with the foreign employer, he could not have possibly been employed in a specialized knowledge capacity on the day he first became employed by the petitioning organization, i.e., March 2005. The petitioner offers no explanation for this fundamental inconsistency in the record. 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). Accordingly, even if the beneficiary's knowledge was specialized, the petitioner has failed to establish that the beneficiary was employed in a specialized knowledge capacity abroad for one year.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioning organization. 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)). 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

---

receipt of 164 hours of training spread out over 11 months of employment will not alone establish that the training sessions imparted "specialized knowledge." The petitioner must establish that the provision of the training is necessary to impart the specialized knowledge, that a substantial number of other similarly employed workers do not also have the claimed specialized knowledge, and, crucially, that the provision of the training to other similarly educated and employed workers would be economically inconvenient to the petitioning organization. In this matter, the provision of 164 hours, or approximately 4 weeks, of on-the-job training to a relatively new employee as described in the record does not constitute an economic inconvenience of a magnitude sufficient to justify labeling the imparted knowledge as "specialized" absent the existence of other factors, e.g., infrequency of the training, expenses related to the employment of outside teachers, or the location of the training, any of which could possibly establish that the provision of such training to a different employee would be economically inconvenient.

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 firm's operation.

*Id.* at 53.

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. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for “key personnel.” *See generally*, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term “key personnel” denotes a position within the petitioning company that is “of crucial importance.” Webster’s II New College Dictionary 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered “important” to a petitioner’s enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee. Accordingly, based on the definition of “specialized knowledge” and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between 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. REP. 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 subcommittee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed “L” category. In response to the Chairman’s questions, various witnesses responded that they understood the legislation would allow “high-level people,” “experts,” individuals with “unique” skills, and that it would not include “lower categories” of workers or “skilled craft workers.” *Matter of Penner*, 18 I&N at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> 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.”)

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Executive Associate Commissioner also directs 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 Executive 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.” Memorandum from [REDACTED] Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). 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.

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by computer professionals employed elsewhere. As the petitioner has failed to document any materially unique qualities to the beneficiary’s knowledge, the petitioner’s claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a “key” employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced professional or that he has received special training in the company’s methodologies or processes which would separate him from other professionals employed with the petitioning organization or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

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 will not be employed in the United States, and was not employed abroad, in a capacity involving specialized knowledge. For these reasons, the director’s decision will be affirmed and the petition

will be denied.

Beyond the decision of the director, the petition will also be denied because the petitioner failed to establish that the beneficiary, who will be stationed primarily at the worksite of an unaffiliated employer, will be controlled and supervised principally by the petitioner or that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F). The beneficiary's proposed employment appears to be an impermissible arrangement to provide labor for hire which is prohibited by the anti "job shop" provisions of the L-1 Visa Reform Act of 2004.<sup>2</sup>

As amended by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F), provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 1101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated

---

<sup>2</sup>The term "job shop" is commonly used to describe a firm that petitions for aliens in L-1B status to contract their services to other companies, often at wages that undercut the salaries paid to U.S. workers. Upon introducing the L-1 Visa Reform Act, Senator Saxby Chambliss described the abuse as follows:

The situation in question arises when a company with both foreign and U.S.-based operations obtains an L-1 visa to transfer a foreign employee who has "specialized knowledge" of the company's product or processes. The problem occurs only when an employee with specialized knowledge is placed offsite at the business location of a third party company. In this context, if the L-1 employee does not bring anything more than generic knowledge of the third party company's operations, the foreign worker is acting more like an H-1B professional than a true intracompany transferee. Outsourcing an L-1 worker in this way has resulted in American workers being displaced at the third party company.

149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003).

In general, the L-1B visa classification does not currently include the same U.S. worker protection provisions as the H-1B visa classification. *See generally*, 8 C.F.R. §§ 214.2(h) and (l). The L-1B visa classification is not subject to a numerical cap, does not require the employer to certify that the alien will be paid the "prevailing wage," and does not require the employer to pay for the return transportation costs if the alien is dismissed from employment. Additionally, by filing under the L-1B classification, an employer will not be required to pay the \$1,500 fee for each new H-1B petition which funds job training and low-income scholarships for U.S. workers. Section 214(c)(9) of the Act.

employer; or

- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act was created by the L-1 Visa Reform Act of 2004 and is applicable to all L-1B petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). As explained above, the primary purpose of the L-1 Visa Reform Act amendment was to prohibit the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <[http://judiciary.senate.gov/member\\_statement.cfm?id=878&wit\\_id=3355](http://judiciary.senate.gov/member_statement.cfm?id=878&wit_id=3355)> (accessed on July 16, 2007).

In evaluating a petition subject to the terms of the L-1 Visa Reform Act, the AAO must emphasize that the petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1). As such, if a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

In this matter, the petitioner indicates in the L Classification Supplement to Form I-129 that the beneficiary will be stationed primarily at the worksite of the unaffiliated employer. The petitioner further asserts in an attachment to the petition that all of its employees "work directly for [the petitioner] on projects" and "under the supervision of one or more [of the petitioner's] project managers." The petitioner emphasizes that it is not a "placement company, nor an agent that arranges short-term employment." Rather, the petitioner asserts that it "designs, engineers, and implements business solutions on a project basis for companies that are not in the IT sector."

Furthermore, in response to the director's Request for Evidence, the petitioner submitted an organizational chart pertaining to the beneficiary's role within the QRI Enhancement Project. The chart shows the beneficiary reporting to a project leader employed by the petitioner but also simultaneously "interacting" with an "account manager" employed by the unaffiliated employer. The petitioner did not specifically explain the difference between "reporting" and "interacting" for purposes of the organizational chart or describe, exactly,

the nature of the beneficiary's "interaction" with the unaffiliated employer's "account manager."

Finally, as explained above, the petitioner describes the beneficiary as having specialized knowledge of the QRI Enhancement Project. The petitioner describes the QRI Enhancement Project on page 3 of the June 14, 2007 letter appended to the initial petition. Generally, the project is described as maintaining and enhancing the unaffiliated employer's applications systems as these pertain to the issuance of certain commercial insurance policies. Apparently, the unaffiliated employer has hired the petitioning organization to provide services in connection with the QRI Enhancement Project, and the petitioner desires to employ the beneficiary in the United States to continue his work on the project at the unaffiliated employer's workplace in Hartford, Connecticut. According to the petitioner, the beneficiary gained "specialized knowledge" of the QRI Enhancement Project during his employment abroad. As explained in the letter dated June 14, 2007, the beneficiary "has acquired [unaffiliated employer] business product and technical process knowledge that can only be attained through developing the company's information technology and is thereby neither common nor basic knowledge." Further, because the beneficiary "worked on design, development and testing during the development phases of the [QRI Enhancement Project]," he has acquired "the business knowledge of the project for future leveraging during the upcoming implementation, modification, and enhancement phases of the project."

Upon review, the record is not persuasive in establishing either (1) that the beneficiary, who will be stationed primarily at the worksite of an unaffiliated employer, will be controlled and supervised principally by the petitioner; or (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

First, the record is not persuasive in establishing that the beneficiary will be controlled and supervised principally by the petitioner. As explained above, while the petitioner asserts that the beneficiary will be supervised by a project leader, it also appears that he will be supervised to some extent by an "account manager" employed by the unaffiliated employer. The exact relationship between the project leader, the account manager, and the beneficiary was not clearly defined even though the director specifically requested an organizational chart in the Request for Evidence. 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). 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Given that the beneficiary will be employed at the workplace of the unaffiliated employer, it is imperative under the L-1 Visa Reform Act that the petitioner clearly establish that the beneficiary will be principally, rather than nominally or indirectly, supervised and controlled by the petitioning organization while working on the QRI Enhancement Project.

Accordingly, as it cannot be concluded that the beneficiary will be principally controlled and supervised by the petitioner during his employment at the unaffiliated employer's workplace, the petition will be denied for this additional reason.

The second issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge

specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

Upon review, the record is not persuasive in establishing that the beneficiary's placement at the unaffiliated employer's workplace to work on the QRI Enhancement Project is related to the provision of a service for which specialized knowledge *specific to the petitioning organization* is necessary. To the contrary, even assuming the beneficiary has specialized knowledge, which he does not (*see supra*), it appears that the beneficiary has knowledge *specific to the unaffiliated employer* rather than to the petitioning organization. As explained above, the petitioner repeatedly emphasizes that the beneficiary has gained "specialized knowledge" of the QRI Enhancement Project during his employment abroad and that he "has acquired [unaffiliated employer] business product and technical process knowledge that can only be attained through developing the company's information technology and is thereby neither common nor basic knowledge." While the petitioner also asserts that the beneficiary has specialized knowledge of certain "proprietary technologies" related to the provision of its services, the record is not persuasive in establishing that this knowledge, which has also not been established to be specialized (*see supra*), is necessary to the provision of the petitioning organization's service. Rather, it is clear that the beneficiary is being transferred to the United States because of his knowledge of the unaffiliated employer's processes and procedures as these pertain to the QRI Enhancement Project.

Accordingly, the petitioner has not described the beneficiary as one having specialized knowledge of the petitioner's processes and procedures. Instead, the petitioner has described the beneficiary as one having knowledge of the processes and procedures of the unaffiliated employer. Therefore, the beneficiary is ineligible under section 214(c)(2)(F)(ii) for classification as an L-1B intracompany transferee. As explained above, in order for an offsite specialized knowledge worker to be eligible for L-1B classification, the petitioner must establish that the beneficiary is not being employed as "labor for hire" for the unaffiliated employer. In this matter, as the petitioner has asserted that the beneficiary's knowledge is related to the unaffiliated employer's processes and procedures, the beneficiary falls squarely within the prohibition imposed by the L-1 Visa Reform Act of 2004 on the "outsourcing" of L-1B nonimmigrants who do not have specialized knowledge related to the provision of a product or service specific to a petitioner.

Moreover, a review of the facts of this petition reveal that this is exactly the type of employment relationship the L-1 Visa Reform Act of 2004 was adopted to prohibit. As explained above, this legislation was proposed to primarily prevent the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software. In this matter, the petitioner has indicated that the project on which the beneficiary has been working, both abroad and in the United States, involves software such as Microsoft Visual Studio .net 2003, Microsoft Office, VSS, Visual Studio 6.0, SQL Server 2000, and applications related specifically to the unaffiliated employer. Importantly, the petitioner is not providing these implementation services in connection with the sale of any technology products, and the beneficiary's purported specialized knowledge has not been established to be related to the petitioner's provision of a service other than the provision of labor.

Accordingly, as the beneficiary's placement is not related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, the petition will be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews matters on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The director's decision is affirmed. The petition is denied.