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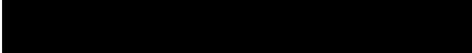
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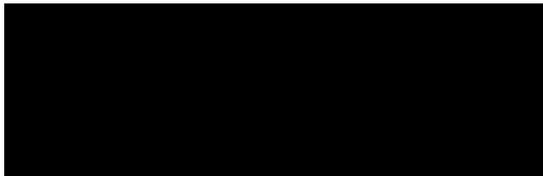


File: WAC 05 053 51239 Office: CALIFORNIA SERVICE CENTER Date: **OCT 02 2007**

IN RE: Petitioner: 
Beneficiary: 

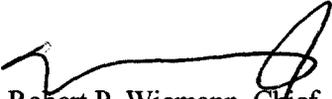
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office



DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa and certified his decision to the Administrative Appeals Office (AAO). The AAO will affirm the director's decision to deny the petition.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the provision of information technology services, product design services and business process consulting. The petitioner claims to be a branch office of Wipro Limited, an Indian corporation located in Bangalore, India. The petitioner seeks to employ the beneficiary as a technical specialist for a three-year period.

The director concluded that the petitioner did not establish that the position offered to the beneficiary requires the services of an individual possessing specialized knowledge, or that the beneficiary possesses specialized knowledge. The director denied the petition and issued a notice of certification on February 11, 2005. The petitioner, through counsel, has submitted a timely brief in response.

In response to the denial and notice of certification, counsel asserts that the director erroneously concluded that the beneficiary's knowledge of the petitioner's processes and procedures is not advanced and claims that the director misunderstood the petitioner's unproven assertion that only two percent of its employees have knowledge equivalent to that possessed by the beneficiary.¹ Counsel also objects to the director's finding that knowledge of the petitioner's processes and procedures cannot be considered specialized solely because such procedures are standardized and not narrowly held throughout the organization.

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, 8 U.S.C. § 1101(a)(15)(L). 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

¹ While the petitioner claims that "only two percent" of its employees have the same knowledge that should be considered specialized, it is noted that the petitioner claims to have 27,500 employees for a total pool of approximately 550 potential specialized knowledge employees. CIS records indicate that the petitioner and its affiliated companies have filed approximately 3,687 L-1B nonimmigrant petitions in the past five years and more than 500 during the 2007 fiscal year. As will be discussed, the petitioner appears to be substituting L-1B nonimmigrant workers for H-1B specialty occupation workers. The L-1B visa classification was not intended to alleviate or remedy a shortage of United States workers. *Matter of Penner*, 18 I&N Dec. 49, 53-54 (Comm. 1982). The H-1B temporary worker provisions contained in section 101(a)(15)(H) of the Act, 8 U.S.C. 1101(a)(15)(H), provide a basis for admission of workers for whom there is a shortage.

- (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 the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has 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 or procedures.

In a December 9, 2004 letter appended to the initial petition, the petitioner indicated that he beneficiary would serve as a technical specialist for the "System Administration Support" project being carried out for the petitioner's New Jersey-based client, involving Unix and Sun server administration. The petitioner described the proposed duties as follows:

[The beneficiary's] role as a Technical Specialist on a 8 member onsite team – with responsibility for managing Unix server administration activities, installing operating systems, jump starting installations, administrating file systems, providing administration for Veritas Volume and cluster activities, maintaining systems, providing performance tuning, providing user administration, implementing security systems, and resolving cluster fail-

overs. On a weekly basis he will perform system maintenance on production servers by installing and configuring new hard disks and storage boxes. He will run performance monitoring tasks, tune the kernel parameters, generate performance reports, participate in team meetings, and provide status reports to the Project Manager.

The petitioner further provided the following description of the beneficiary's current duties with the foreign entity and his claimed specialized knowledge:

[The beneficiary] joined [the foreign entity] on March 31, 2003. From his date of joining to the present he has been working on the Distributed Operations project for Lehman Brothers. He was responsible for providing 24x7 backup operations, monitoring the backups and failures using Veritas Net-backup and HP Open View, monitoring the exchange servers backup using Comvolt Galaxy, troubleshooting backup failures and tape drive issues, interacting with system users to determine and resolve technical issues related to the system database and applications, monitoring and managing autosys batch jobs, and providing autosys batch change implementation.

On the projects in India and on his assignment to [the petitioner's] Finance projects in the United States, [the beneficiary] utilized and will utilize the following . . . **proprietary procedures, tools and processes:**

- **i-PAT** – [The petitioner's] process automation tool to manage project development activities
- **Effort Tracking Tool** – [The petitioner's] tool to track efforts spent on the project
- **Veloci-Q** – [The petitioner's] proprietary quality control tool including procedures and guidelines for
 - Preparing for requirement specification
 - Preparing for functional specification
 - Preparing for design and coding standards
 - Review and inspection

Knowledge of and facility of these . . . proprietary procedures, tools and reusable components is NOT available to any computer professionals EXCEPT for [the petitioner's] employees and is NOT generally mastered by [an employee of the petitioner's organization] with less than one year experience [The beneficiary] has more than 1 ½ years of experience working on THIS SAME project involving system administration. He has received specific training from [the foreign entity] in relevant technologies such as EMC Storage Products, HP OpenView, Legato/Alexandria, Maintenance and Support, Netscape Messaging, Veritas Cluster and Windows ServerBecause of his advanced knowledge. . .of the tools procedures and processes being utilized on the Lehman Brothers project, he has been chosen to be a Technical Specialist.

(Emphasis in original.) The petitioner also submitted the beneficiary's resume, which identified his current role with the foreign entity as "Tech Lead" and listed the following project contributions:

Backup Operation for US (24/7 Support) 1. Monitoring the backups and failures throughout the Veritas Netbackup and HP open view for 2000 servers which includes 1200 SUN M/c, 500 Linux servers and 300 Windows. 2. Monitoring the exchange servers backup and failures through the Comvolt galaxy. 3. Troubleshooting the backup failures of both the Netbackup & Galaxy backup failures and escalating to the appropriate teams . . . as per the escalation method. 4. Troubleshooting the tape drive problem and escalating . . . 5. Performing restore as per the user request through the remedy. 6. Restore request involves interacting with Various Users in the Area of System Administration, Database Administration and Application team. 7. Interacting with Vital Records (Offshore Tape Management) for Delivery of Tapes [at] Data Centre. 8. Monitoring & Managing the Autosys Batch jobs, Autosys Batch Change Implementation. 9. Railed Autosys Jobs are Intimated to users as per escalation method. 10. Responsible for Troubleshooting of all Failed Jobs (Specific to Autosys).

Finally, the petitioner stated in its December 4, 2004 letter that the company has developed and deployed its own "proprietary, internally designed and unique set of tools and procedures to address the key issues of quality control, project management and business relationship management. It is the use of these tools . . . by its key personnel – project and business relationship managers and key technical personnel – which ensures [the petitioner's] competitiveness." The petitioner provided a separate document describing these tools and processes.

On December 31, 2004, the director issued a notice of intent to deny the petition. The director noted that the petitioner's internal tools for project management, quality control and business relationship management are clearly standardized and "fully migrated" to all operational sections of the company. The director further observed that the beneficiary is primarily a user of the described tools and procedures and does not serve as a designer, developer or trainer. The director stated, "While a user of a proprietary process or procedure may qualify under the specialized knowledge provisions of the Act especially at the implementation stage, at some point the knowledge is routine and standardized within an organization's culture and routine users would no longer qualify for L-1B status." Thus, the director concluded that the beneficiary's knowledge of the petitioner's proprietary processes and procedures does not constitute specialized knowledge. The director notified the petitioner that it had 30 days to submit additional information, evidence or arguments to support the petition.

In a response dated January 27, 2005, the petitioner submitted a lengthy statement further describing the beneficiary's qualifications and the petitioner's internal processes and procedures. As the petitioner's statement is part of the record, it will not be repeated in its entirety herein. The petitioner explained that the company has developed tools for project management, quality control and business relationship management which are responsible for its success in the industry. The petitioner claimed that the beneficiary possesses knowledge which is not generally known by practitioners in the field; that his knowledge of proprietary processes and procedures is "superior to elementary or basic knowledge possessed by others within the

company”; and that the beneficiary’s expertise is critical to the petitioner’s “competitiveness in the IT and Business Process Consulting marketplace.” The petitioner further described the beneficiary’s specialized knowledge qualifications as follows:

During his 1 year and 10 months with [the foreign entity], [the beneficiary] has made major contributions to [the foreign entity’s] business. In working with one of [the petitioner’s] key clients in the U.S . . . , he excelled in established a strong business relationship with the client. He has been extensively involved in he Distributed Operations project and involved in the full administration of [the petitioner’s] unique Service Support Incident Management and Problem Management processes and procedures [The beneficiary] is trained in VelociQ and guidelines for customization, testing, configuration management, CMM and CMMI, and iPAT

* * *

[The beneficiary] has been trained by [the foreign entity] in the following areas. This training will be essential for executing the project at Lehman Brothers.

1. Distributed Operations Support – This provides the integration of Autosys, HP OpenView and Net Backup Data.
2. Advanced Clustering with support for critical system servers
3. OpenView, Remedy and Legacy Backup Alert tools
4. Knet Delivery processes
5. Software Packages including Veritas Clustering Server, Veritas Volume Manager, COMM Vault, Veritas Net Backup, ACSLS, VI Editor, AWK, Scripting and Legato Backup.

* * *

[The beneficiary] is within the approximate 2% of [the petitioning organization’s] computer professionals who have the same knowledge of [the petitioner’s] proprietary processes and procedures as applied to the technology area in which he is employed. He has 1 year and 10 months of experience with [the foreign entity] where he has provided advanced system administration, storage design and management, production support and automation of error reporting for the Finance and Securities domain. Using [the foreign entity’s] proprietary Six Sigma and Support Management technologies and methodologies, he has been instrumental in streamlining processes and procedures to prevent system failures and reduce errors. He wrote the White Paper on the Automation of Autosys Jobs for the U.S. and U.K. environments and directly contributed to [the foreign entity’s] knowledge acquisition documentation for backup and restore strategies. Using his production infrastructure redesign and deployment skills, he has provided reliable, available and serviceable systems that are unique to the client’s business requirements. His technology expertise involves software tools and technologies such as Unix, Linux, Windows and Net APP Filers which he has used to provide back administration in a

high-demand, high-availability business environment. [The beneficiary] has directly trained Technical Specialists in the use of [the foreign entity's] technologies and methodologies for cross-platform backup and Autosys monitoring and reporting.

On February 11, 2005, the director denied the petition concluding that the petitioner had not established that the beneficiary possesses specialized knowledge, or that the beneficiary has been or would be employed in a capacity that requires specialized knowledge. The director noted that knowledge of the petitioner's proprietary tools for project management, quality control and business relationship management appears to be standardized throughout its organization and therefore cannot be considered specialized knowledge. The director also questioned the petitioner's estimate that "only two percent" of its computer professionals working in the same specialty as the beneficiary have equivalent knowledge of these processes and procedures. The director concluded that knowledge of the petitioner's proprietary tools and procedures at an advanced level is not essential and that the proposed position in the United States does not require specialized knowledge.

In response to the denial and notice of certification, counsel asserts that the director misunderstood the nature of the petitioner's business and the advanced nature of the beneficiary's knowledge. Counsel contends that the director erred by determining that knowledge which is widely held or standardized throughout an organization cannot be "specialized knowledge." Counsel asserts that there is no requirement that knowledge be narrowly within an organization in order to qualify as "specialized." Counsel further contends that the director misunderstood the petitioner's comparison between the beneficiary's knowledge and knowledge held by its other employees, clarifying that the beneficiary's knowledge of the petitioner's practices and procedures is particularly advanced within his specific technology area. Counsel re-states portions of the petitioner's January 27, 2004 memorandum and emphasizes that the beneficiary's "advanced knowledge of the petitioner's processes and procedures as applied to server maintenance across multiple time zones in the high-demand, high-availability, business environment of the financial services domain is the reason why [the petitioner] is bringing this beneficiary to the United States."

Counsel further notes that while all of the foreign entity's and petitioner's technical personnel are trained in company tools, processes and procedures, "certain of its technical personnel gain experience, specialized training and targeted mentoring in relation to specific long term projects, specific customers, specific domains or specific technologies." Counsel asserts that select personnel therefore acquire advanced knowledge as applied to specific customers, projects, domains and/or technologies. Counsel claims that employees with advanced knowledge, such as the beneficiary, are key personnel who perform training, mentoring and monitoring functions on projects and provide guidance to less advanced employees.

On review, counsel's assertions are not persuasive. The petitioner has not submitted sufficient evidence to establish that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D), or that the intended position requires an employee with specialized knowledge.

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.*

In the instant matter, the petitioner submitted a detailed description of the beneficiary's employment in the foreign entity and his intended employment in the United States entity. However, the petitioner has not documented that the job duties to be performed require specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). The beneficiary's job description does not distinguish his knowledge as more advanced or distinct among other technical specialists employed by the foreign or U.S. entities or by other unrelated companies. The majority of the beneficiary's duties relate to systems administration, maintenance and support for Unix and Sun Solaris servers for a financial services company which is a client of the petitioner and the foreign entity. The technical environment in which the beneficiary has been and would be working is typical for a large-scale system administration project and requires knowledge and technical skills that can easily be gained in the industry, such as HP OpenView, Veritas Cluster, Autosys, EMC Storage Products, Solaris, Linux, Unix, Windows, Remedy and NetBackup. An experienced systems administration specialist at any information technology consulting company would be expected to possess similar expertise.

The petitioner and counsel have repeatedly asserted that the beneficiary is knowledgeable of processes, standards and tools that are proprietary and unique to the petitioner and its foreign parent company, including the company's VelociQ and iPAT processes and tools. The petitioner suggests that knowledge of these processes is essential for performance of the beneficiary's job duties, and also differentiates his knowledge from that which is generally known by similarly employed professionals in the beneficiary's field. However, the petitioner has neither shown that knowledge of these procedures and tools alone constitutes specialized knowledge, nor has it demonstrated that the beneficiary possesses advanced knowledge of these tools. The petitioner has indicated that all of its technical employees are trained in the company's internal processes and tools, which are used for quality control, process automation, problem management, project tracking, project development and other functions. Yet, the petitioner has neither provided information regarding the type and length of training its employees receive, nor provided evidence that the beneficiary actually completed the training at all, much less received more advanced or intensive training or experience compared to his peers within the company.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, the petitioner has not established that the beneficiary possesses the claimed specialized knowledge. For this reason alone, the petition must be denied.

Regardless of the petition's lack of evidentiary support, the petitioner's assertions defy reason: if all similarly employed workers within the petitioner's organization receive the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. Although counsel correctly observes that knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow

the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

Furthermore, the petitioner's processes and tools, while specific to the company, have not been shown to be significantly different from those used by other information technology consulting firms, which necessarily also utilize quality control systems, project methodologies and automated project tracking and estimation tools in order to efficiently manage similar client projects. Again, the petitioner did not specify the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it is impossible for the AAO to assess whether these processes are particularly complex or different compared to those utilized by other companies in the industry, or whether it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. For example, the petitioner states that its VelociQ quality system is compliant to a number of industry standard quality systems including ISO 9001 and CMM, and that it "provides most of the features included in vendor's standard Quality Assurance tools in the market." While the system incorporates the petitioner's own quality processes, it is apparent that it is primarily based on industry standards that are not specific to the petitioner. Another key tool identified by the petitioner, iPAT, is used for tracking project data, and the petitioner grants that there are similar tools available in the market, but that none of them "captures the effort details as does iPAT." Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are simply customized versions of standard practices used in the industry. For this additional reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

In addition, 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)).² As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

² Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS regulation or precedent decisions interpreting the term. The legislative history does not indicate that Congress intended to expand or loosen the standards for the L-1B classification. 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.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the specialized knowledge L-1B classification.

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. The evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker

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*, the term "specialized knowledge" is inherently 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 that employee and the remainder of the petitioner's workforce.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given

specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). 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.")

Therefore, based on the intent of Congress in its creation of the L-1B visa category, even if the petitioner were to demonstrate that the beneficiary has received some specialized training, acts as a specialist, or performs highly technical duties, this showing will not necessarily establish eligibility for L-1B intracompany transferee classification. The petitioner must submit evidence to show that the beneficiary has "special" or "advanced level" knowledge within the company and is being transferred to the United States as a "key employee." This has not been successfully demonstrated in the instant case, where the beneficiary appears to be one among a large number of the petitioner's employees who possesses similar training and knowledge and who the record shows is also one of many the beneficiaries on whose behalf the same petitioner has filed a significant number of L-1B petitions.

Counsel's primary argument in this proceeding is that the beneficiary's knowledge of the petitioner's processes and procedures is "advanced" as opposed to the elementary or basic knowledge possessed by others within the petitioner's group, and that the knowledge is valuable to the employer's competitiveness in the marketplace. Specifically, the petitioner claims that the beneficiary's knowledge should be considered advanced as it applies to server maintenance across multiple time zones in the financial services domain. The petitioner further asserts that combination of the beneficiary's skills within his technical specialty and his advanced knowledge of the petitioner's procedures, constitutes "specialized knowledge" as defined at 8 C.F.R. § 214.2(l)(ii)(D).

As noted above, the petitioner concedes that all of its employees receive training in the above-mentioned quality assurance and project development practices and tools. In this certification proceeding, counsel claims that certain technical personnel "gain experience, specialized training and targeted mentoring in relation to specific long term projects, specific customers, specific domains or specific technologies" and that "those employees acquire an 'advanced' knowledge of the petitioner's tools, processes and procedures as applied to specific customers, projects, domains and/or technologies." The petitioner and counsel identify the beneficiary as one of these "key technical personnel" and claim that his knowledge of the petitioner's procedures within his specific technical specialty places him within the top two percent of its computer professionals working in the same area. In support of its claim that the beneficiary's knowledge is advanced, the petitioner claims: (1) the beneficiary has been responsible for streamlining processes using the company's proprietary tools in the financial services domain; (2), that he has written white papers in the specific area of server support in multi-national, multi-time zone environments; (3) that he has contributed to the documentation used by company personnel for backup and restore strategies, giving him an advanced familiarity of the petitioner's system administration procedures; and, (4) that he has directly trained other personnel in the use of company methodologies in the specific area in which he will work in the United States.

Upon review, the petitioner has not adequately substantiated its claim that the beneficiary possesses "advanced" knowledge of the company's processes, procedures and tools. As noted above, the petitioner has not identified with any specificity the type or length of training received by the beneficiary as compared to that received by other employees, nor provided evidence that he actually completed any training in the company's processes and tools. In fact, the petitioner indicated that majority of the training provided to the beneficiary was related specifically to system administration and server maintenance tools and software packages which are clearly not specific or proprietary to the petitioner. In addition, as noted by the director in his notice of intent to deny the petition, the beneficiary is primarily a user of the company's internal processes and tools, not a developer, designer or trainer. The beneficiary undoubtedly uses the company tools and procedures to facilitate and ensure the quality of his work, but the record reflects that his primary role is as a systems administrator utilizing technologies that are common in his field rather than proprietary or specific to the petitioner.

At the time the petition was filed, the beneficiary had been employed with the foreign entity for one year and eight months as a member of a seventeen-member India-based team responsible for supporting a U.S.-based client for a distributed operations project. As discussed above, the job description provided by the petitioner and included in the beneficiary's resume describe typical server maintenance duties, including monitoring servers, backing up systems, troubleshooting and escalating problems using knowledge of common operating systems, servers, storage management techniques, and system and network tools. Although the petitioner characterizes the beneficiary as among its "key technical personnel" who possess specialized knowledge, it is not evident from the record that the beneficiary's 20 months of experience with the petitioner at the time of filing should be equated to "special" or "advanced level" knowledge on the level of "key personnel." This conclusion is further supported by the petitioner's own statement that it typically utilizes the L-1B visa category only for those employees who have two or more years of experience with the foreign entity.

The petitioner attempts to narrowly define the beneficiary's knowledge of the petitioner's processes and tools in an effort to establish that his knowledge is advanced. Specifically, the petitioner claims that the beneficiary's knowledge of the company's processes is virtually unsurpassed as they apply to the specific area of server maintenance across multiple time zones in the financial services sector. However, the petitioner provides no explanation as to how it arrived at its conclusion that the beneficiary is among the top "two-percent" of its staff in this area. The petitioner has not described how the beneficiary utilizes the company's internal procedures in his current role or how his knowledge rises above that of other similarly employed workers within the foreign entity. The petitioner has provided no basis for comparing the knowledge held by the beneficiary to that held by the other members of his seventeen-member team, or that held by other employees working on similar projects for the petitioner in the same market sector or technical specialty. Considering that the company provides offshore project support from India for many U.S.-based customers, it is not clear that knowledge of server maintenance procedures across multiple time zones would be uncommon knowledge within the petitioner's organization. Nor has the petitioner described how or if the internal processes and procedures utilized for client projects in the financial sector differ from those utilized by employees working on similar projects in other market sectors.

Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Based on the evidence on record,

the AAO cannot conclude that the beneficiary's has acquired advanced knowledge of the petitioner's internal procedures and tools through his training or experience with the foreign entity.

The AAO acknowledges the petitioner's claim that the beneficiary has contributed to writing documentation, processes and procedures within his specialty, and delivered training to other employees. However, these duties have not been described with sufficient specificity to establish that advanced knowledge of the petitioner's internal procedures was in fact required to perform them. Further, these responsibilities were not included in the initial description of the beneficiary's job duties, which focused primarily on routine systems and server maintenance tasks. The omission of these higher-level responsibilities from the beneficiary's initial job description and his resume suggests that these duties are not among the beneficiary's regular daily tasks.

In an attempt to establish that the beneficiary possesses an advanced level of knowledge with respect to the petitioner's processes, the petitioner also notes that the beneficiary wrote a white paper in the specific area of server support in multinational environments. However, the petitioner did not provide a copy of the paper. Since the AAO has not reviewed the contents of the document, it cannot conclude that the beneficiary relied upon an advanced knowledge of the foreign entity's procedures in order to write it. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's and counsel's unsupported statements are insufficient to establish that the beneficiary's knowledge is special or advanced or that it is so prominent and valuable that he qualifies as "key personnel" within the petitioner's corporate group. *See Matter of Penner*, 18 I&N Dec. at 53.

Finally, even assuming that the petitioner had established that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures, there is no evidence in the record to establish that the position with the United States entity requires such knowledge. As noted above, the beneficiary will be performing duties typical of a systems administrator, using technologies and skills which are common in his profession. While it is clear that he would use the petitioner's internal systems and tools to record and track his troubleshooting and system backup and maintenance activities, the record does not establish that the beneficiary will be performing any duties which would require more than basic proficiency with the company's internal procedures. The petitioner has not indicated that the beneficiary will hold a senior role within the eight-member team he would be joining, nor identified any duties which would require an advanced knowledge of company processes and tools. Rather, it appears that any employee who had similar experience in the beneficiary's technical specialty and had completed the petitioner's internal training program could perform the duties of the offered position. While the beneficiary's prior experience working on the U.S. customer's project may be helpful, the petitioner has not identified anything unusual or unique regarding this particular project, such that only employees with prior experience with the project would be capable of providing production support for the client's servers and systems.

In sum, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among server and system administration specialists 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 used by the petitioner are substantially different from those used by other technology consulting companies. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to successfully perform his job duties for the foreign entity. However, 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.

Rather, the record reveals that other information technology companies utilize comparable procedures and tools, that the claimed specialized knowledge is itself widely available within the petitioner's organization, and that other organizations, although they do not utilize exactly the same quality assurance and project procedures, may employ workers with technical knowledge and skills equivalent to that of the beneficiary. Furthermore, the petitioner has failed to document that the beneficiary has actually received training in the company's internally developed procedures and tools, much less established that his training and experience have resulted in advanced knowledge of such procedures which would elevate him to the level of key personnel. Thus, as the petitioner has not established that the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, the director reasonably determined that the beneficiary does not qualify as a specialized knowledge worker.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F. Supp. at 16. The petitioner has not established that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

For these reasons, the appeal must be dismissed.

Beyond the decision of the director, the AAO notes that had this petition been approved, it would have been approved in gross error. *See* 8 CFR 214.2(l)(9)(iii)(A)(5).

CIS records indicate that the petitioner and its affiliated companies have filed approximately 3,687 L-1B visa petitions in the last five years. Since the start of the 2007 fiscal year on October 1, 2006, the petitioner and its affiliated companies have filed 523 petitions for L-1B workers at the California and Vermont Service Centers. The AAO cannot ignore that the comprehensive statutory framework demonstrates that Congress intended for aliens who are serving in a professional or "specialty occupation" position, such as this software design and development position, be subject to strict controls. Through the Immigration and Nationality Act, Congress has provided for 20 basic nonimmigrant visa categories. *See* 8 U.S.C. §§ 1101(a)(15)(A) through (V). These

twenty categories include the H-1B visa classification which is intended for an alien coming to the United States to perform services in a "specialty occupation." 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The term "specialty occupation" means an occupation that requires: (a) the theoretical and practical application of a body of "highly specialized knowledge," and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Section 214(i)(1), 8 U.S.C. § 1184(i)(1). Virtually all computer programmer and computer science occupations, such as the position that has been proffered the alien in this petition, are considered to be "specialty occupations" and eligible under the H-1B visa classification. In popular parlance, the H-1B visa classification is commonly referred to as the "high tech visa."³

By law, the H-1B visa classification is subject to a number of restrictions and controls that are intended to protect the United States workforce. First, Congress has limited or "capped" the number of H-1B visas issued at 65,000 per fiscal year.⁴ See section 214(g)(1)(A) of the Act. Second, the statute requires the employer to file a Labor Condition Application (LCA) with the Department of Labor, certifying that it is paying the "required" or "prevailing wage" to the alien, that it is providing "working conditions" that will not adversely affect other workers similarly employed, that there is no strike or lockout at the place of employment, that no U.S. worker will be displaced by the filing of the petition, and that the employer has provided notice to the bargaining representative or posted notice that an LCA has been filed. See generally section 212(n)(1) of the Act; 20 C.F.R. § 655.705(c), 655.730(d). Additionally, the regulations require the employer to pay for the return transportation costs if the H-1B alien is dismissed from employment. Cf. 8 C.F.R. § 214.2(h)(4)(iii)(E).

Finally, as originally required by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) and reinstated by the 2005 Omnibus Appropriations Act, the H-1B employer is required to pay a \$1,500 fee for each new H-1B petition. In part, the \$1,500 fee is intended to allow U.S. workers to attend job training and receive low-income scholarships or grants for mathematics, engineering or science enrichment courses administered by the National Science Foundation and the Department of Labor.

In contrast with the H-1B visa classification, the L-1B specialized knowledge visa classification does not contain any statutory visa limitations or protections for U.S. workers. The L-1B visa classification is not subject to a numerical cap and may be granted for an unlimited number of aliens. The L-1B classification does not require the employer to file an LCA with the Department of Labor to certify that the alien will be paid the "prevailing wage" and provided adequate working conditions. The L-1B visa regulations do not require the employer to pay for the return transportation costs if the alien is dismissed from employment. The L-1B classification does not require the \$1,500 fee for each new H-1B petition that is intended to fund job training for U.S. workers and low-income scholarships for mathematics, engineering or science enrichment

³ Comparing the definition of H-1B "specialty occupation" and the L-1B "specialized knowledge" terms, it must be observed that both refer to "specialized knowledge." Cf. sections 214(c)(2)(B) and 214(i)(1)(A).

⁴ For fiscal year 2007, CIS announced that it had received enough H-1B petitions to meet the Congressionally-mandated cap on May 26, 2006, more than four months prior to the start of the fiscal year.

courses. It is noted that by filing petitions for L-1B visas instead of H-1B visas during the 2007 fiscal year, the petitioner has avoided paying approximately \$750,000 into the fund for the re-training of U.S. workers.

As previously discussed, the petitioner has not established 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 that held by similarly employed workers within the petitioner's company. If an employee with 20 months experience could be deemed to possess specialized knowledge, then all experienced employees would possess specialized knowledge under the petitioner's proposed rubric. Indeed, the beneficiary in this matter would appear to be typical of an employee with 20 months of experience in the petitioner's organization.

Accordingly, if this beneficiary is representative of the Wipro Ltd. L-1B "specialized knowledge" employees, the petitioner appears to be requesting L-1B nonimmigrant visas for their average "specialty occupation" employees, instead of H-1B visas, regardless of whether the beneficiary possesses knowledge that is "special" or "advanced" under the statute.

Such a practice would be contrary to the comprehensive statutory framework and the intent of Congress. As previously discussed, the legislative history indicates that Congress understood that the number of admissions under the L-1B 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" *Matter of Penner*, 18 I&N Dec. at 51 (citing the 1970 House Report, H.R. No. 91-851). The L-1B visa classification was not intended to alleviate or remedy a shortage of United States workers. Instead, the H-1B temporary worker provisions contained in section 101(a)(15)(H) of the Act, 8 U.S.C. 1101(a)(15)(H), provide a basis for admission of workers for whom there is a shortage. *Matter of Penner*, at 53-54.

This comprehensive statutory framework shows that Congress intended that aliens who are serving in a "specialty occupation" be subject to strict controls. By definition, these restrictions apply to an alien serving in an occupation that requires the theoretical and practical application of a body of "highly specialized knowledge," and the attainment of a bachelor's degree in the specialty as a minimum for entry into the occupation in the United States. 8 U.S.C. § 1184(i)(1). Thus, approving an L-1B petition based on ordinary "specialty occupation" duties, with no evidence of "special" or "advanced" knowledge of the petitioner's product, processes and procedures, would thwart the statutory framework for the regulation of nonimmigrant H-1B workers.

For this reason, the AAO concludes that approving a petition for nonimmigrant worker on behalf of an alien who is going to perform ordinary professional duties, such as the duties presented in this petition, would involve clear and gross error on the part of the director.

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 appeals on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's February 11, 2005 decision to deny the petition will be affirmed.

ORDER: The decision of the director dated February 11, 2005 is affirmed. The petition is denied.