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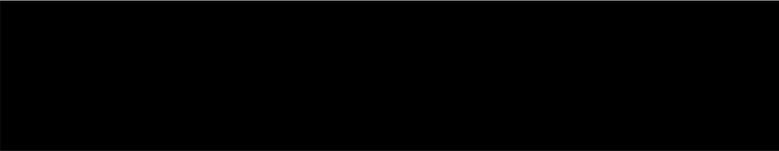
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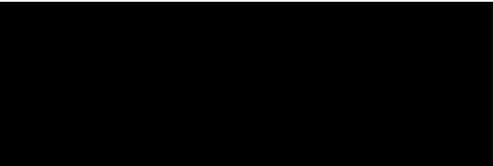


File: SRC 04 014 52379 Office: TEXAS SERVICE CENTER Date: SEP 25 2007

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

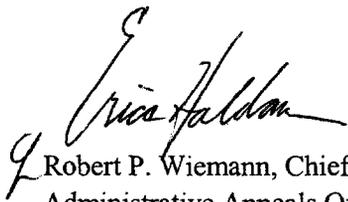
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner, a corporation organized in the State of Texas, claims to be a provider of information technology services. It seeks to extend the temporary employment of the beneficiary as an Information Analyst in the United States pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director determined that the petitioner had not established that (1) the beneficiary possessed specialized knowledge; or (2) the intended employment in the United States required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner claims that the director erred in denying the petition, arguing that the evidence contained in the record made the petition "clearly approvable." In support of this contention, counsel submits a brief and additional evidence.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary gained specialized knowledge during his employment abroad and thus 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 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.

In a letter from the petitioner dated October 16, 2003, the petitioner stated that it had approximately 137,000 employees worldwide, and that the beneficiary would be working in its Maryland office while in the United States. The petitioner advised that the beneficiary had been in the United States since January of 2003, and that in the past eight months, he had developed the necessary skill set to support the petitioner's customer, identified as NASD. Specifically, the petitioner stated, "he has acquired unique knowledge and skill required by [the petitioner] and its customer, NASD, in providing installation and production support services."

The petitioner further explained that the beneficiary possessed a bachelor's degree in Mathematics from the University of Madras, and that he had over seven years of software experience in various software applications. Additionally, the petitioner claimed that the beneficiary possessed proprietary knowledge of the petitioner and was therefore essential to the continued success and competitiveness of the petitioner and NASD in the industry.

Regarding the beneficiary's duties, the petitioner stated that the beneficiary's position in the United States would continue to be Information Analyst supporting the Form Filing System, and claimed that his primary job responsibilities were as follows:

- Provide expertise and programming support.
- Conceptualize, design, construct, test, and implement portions of business and technical information technology solutions through application of appropriate software development life cycle methodology.
- Interact with the customer to gain an understanding of the business environment, technical context and organizational strategic direction.
- Coordinate and collaborate with others in analyzing collected requirements to ensure plans and identified solutions meet customer needs and expectations.

- Participate in business and technical information technology solution implementations, upgrades, enhancements, and conversions for the project.
- Understand and use appropriate tools to analyze, identify and resolve business and/or technical problems.
- Coordinate the onshore and offshore components of the project and provide technical support to the team members.

The petitioner also submitted the beneficiary's resume, which outlined the technical responsibilities he performed while employed by the petitioner's Indian subsidiary from June 2002 through January 2003. The resume shows that he was assigned to two different projects for NASD, including the "Form Filing" Project, in which his duties included the following:

- Design and Develop VB COM+ business objects to run on Microsoft Windows 2000 Advanced Server
- Design and Develop intuitive and effective user interface using HTML and Active Server Pages (ASP)
- Develop Server Side Batch Programs in VB
- Design Databases
- Coordinate off-shore activities in India

The beneficiary's resume further indicated that he attended the following training offered by the petitioner and/or the foreign employer:

- Configuration Management Process
- PVCS Tracker
- GSMS
- GSMS
- Western Communication, Etiquette & Culture
- The Pre-Interview Process
- Interviewing Skills: Preparing for an Interview
- Interviewing Skills: Conducting an Interview
- Conducting Effective Interviews
- Security Fundamentals

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge and would be employed in the United States in a position that required specialized knowledge. Consequently, a detailed request for evidence was issued on November 11, 2003, which requested evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Specifically, the director requested evidence to establish that the beneficiary's knowledge of the processes and procedures of the petitioner were apart from elementary or basic knowledge possessed by others. Finally, the director specifically noted the petitioner's claim that the beneficiary possessed proprietary knowledge of its systems and practices, and noted that in order to support this contention, the petitioner must

show that the claimed knowledge related to something exclusive to the petitioner. The director also noted that the employment of the beneficiary, or another person with similar knowledge, must be critical to the proprietary interests of the petitioner, and not merely representative of a person who possessed general knowledge and expertise to merely produce a product or provide a service.

The petitioner responded on January 12, 2004. In its letter, the petitioner stated that the beneficiary had worked as part of an offshore team in India supporting the Form Filing applications for over eleven months from February 2002 until December 2002.¹ The petitioner further clarified the exact nature of the relationship between its client and the Form Filing system, and provided the following explanation: “[The petitioner] developed the Form Filing system using ASP, VB, Oracle, Com+ and IIS. The mission of the Form Filing application is to provide a single point of contact [for] members firms for the National Association of Securities Dealers (NASD).” The petitioner further claimed that it had been supporting the NASD account since July 1999.

Regarding the Form Filing system, the petitioner stated that the beneficiary gained knowledge by the following methods:

- Knowledge transfer from onshore by Net meeting and teleconference.
- Attending Web based training provided by onshore team.
- On the job training.
- Training provided by the offshore team by means of meeting and assignments.

The petitioner went on to list the various technical skills and applications an employee must possess in order to support the system, including Oracle, VB, PL/SQL, IIS 5.0, PVCS Tracker, Tivoli Maestro and ASP. The petitioner further stated that it also required “[an] individual with extensive experience in REM Vantive, Global Solutions Management System (GSMS) and EDS Quality Management System, **all of 3 which are EDS proprietary tools.** (Emphasis in original).

The petitioner next stated that the beneficiary gained significant experience in the above-mentioned technical and process skills by the following methods:

- Obtained two-year Higher Diploma in Software Engineering (HDSE) where he received training in the **Software Engineering processes and practices** along with other software like **ASP, VB, ORACLE** and PL/Sql. This consisted of classroom training in which lessons were taught and assignments were given. At the end of the

¹ The beneficiary’s resume indicates that he worked on this project from June 2000 to March 2001, and again from August 2001 to January 2002. 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).

training two live projects were given and candidates were asked to complete it in time as per the requirements and process.

- Gained knowledge in **ORACLE developer tools** by undergoing training from BITECH for four months where he gained a significant knowledge in Oracle and PL/sql.
- Completed **Microsoft Certification in Visual Basic** and **Brainbench Certification in Web development Technologies of Active Server Pages (ASP)**.
- Fine-tuned his technical and process skills by attending courses through [the petitioner's] University.
- Learned GSMS process through the five-day classroom training provided by [the foreign entity] and also used the GSMS process extensively during his stay at offshore for eleven months on the Form Filing project. Knowledge of GSMS is extremely critical to support this project.
- Learned the project specific tools like PVCS Tracker, PVCS Version Manager, Tivoli Maestro, and **REM Vantive, an EDS proprietary tool** during his stay at offshore for eleven months and acquired proficient knowledge of the same. He gained knowledge by means of attending the classroom training provided by [the foreign entity], courses through [the petitioner's] University and through on-job training.

Emphasis in original.

Finally, the petitioner stated that there were 225 employees at the Maryland office, eight of which were present on L visas. The petitioner did not address the director's inquiries as to the minimum amount of time required to train an employee for the offered position, the number of similarly employed workers in the organization, or the number of workers who had received comparable training. The petitioner also failed to respond to the director's request for evidence of training records for the beneficiary.

On January 27, 2004, the director denied the petition. The director determined that the record failed to establish that the beneficiary possessed specialized knowledge or that the position of information analyst required an employee with specialized knowledge as defined by the regulations. The director specifically noted that while the beneficiary's knowledge of various computer hardware and software systems was impressive, there was no indication that this knowledge was any different from other similarly-trained or qualified persons in the industry. The director further noted that five other information analysts in addition to the beneficiary were employed by the petitioner in the United States, but the record failed to show that the beneficiary's duties or qualifications set him apart from these similarly-trained employees.² The director concluded that the petitioner had failed to show that the beneficiary possessed an advanced level of

² The director also noted in the denial that although the petitioner had gained an SEI-CMM Level 5 rating, this rating did not automatically qualify its employees as being in possession of specialized knowledge. The director further references "a multitude of petitions requesting L-1B status for Developers with SEI-CMM and IBM systems." Upon review of the record, however, the petitioner bases no claims upon a SEI-CMM Level 5 rating and, therefore, the director's comments on this issue appear to be in error.

knowledge or expertise that surpassed the elementary knowledge possessed by other workers, and therefore denied the petition.

On appeal, newly-retained counsel for the petitioner requests reconsideration of the beneficiary's qualifications, and breaks down the appeal into three main contentions. First, counsel claims that the petition was clearly approvable based on a previously approved blanket L-1B petition filed on the beneficiary's behalf. Second, counsel asserts that the petitioner's products, procedures, processes and technologies are unique, and, therefore, the beneficiary's knowledge thereof attributes him with specialized knowledge. In support of this premise, counsel provides an updated job description for the beneficiary and claims that ten out of the eleven duties listed require specialized knowledge of the petitioner's technology to perform. Finally, counsel asserts that the beneficiary possesses specialized knowledge of the petitioner's Form Filing system, Global Systems Management Solution, and REM Vantive tool, as well as its procedures, processes and techniques. In support of this premise, counsel relies upon a 1994 legacy Immigration and Naturalization Services (INS) memorandum issued by then Acting Executive Associate Commissioner [REDACTED] entitled "Interpretation of Specialized Knowledge." The AAO will consider each basis individually.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the proposed employment requires an employee with specialized knowledge.

The first basis on appeal is that since the original petition filed in this matter on behalf of the beneficiary was approved under a blanket petition, the petition is "clearly approvable" based on the initial standard of review. Counsel argues that the petitioner has already met the burden of proof in this matter and that the issue of specialized knowledge as pertains to the beneficiary is no longer subject to debate. The AAO disagrees.

First, the AAO notes that the current petition in this matter is an individual petition, not a blanket petition. The regulation at 8 C.F.R. § 214.2(l)(15)(i) provides that when the alien is a beneficiary under a blanket petition, a new certificate of eligibility, accompanied by a copy of the previous approved certificate of eligibility, shall be filed by the petitioner to request an extension of the alien's stay. The petitioner must also request a petition extension. While the record does indicate that a blanket approval was granted to the petitioner in 2002, the Form I-129 submitted in support of the extension of the beneficiary's stay is clearly an individual petition.

Second, even if the beneficiary had been found to be in possession of specialized knowledge at the time the initial visa was approved, this fact alone does not entitle the beneficiary to an indefinite period of approval based on the initial determination of the U.S. Consular officer who approved the blanket L-1B petition. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the reviewing official. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that Citizenship and Immigration Services (CIS) or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Therefore, contrary to counsel's assertion, the prior approval on behalf of the beneficiary does not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's or the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The second and third issues raised by counsel are related, and focus on the beneficiary's claimed unique and specialized knowledge of the petitioner's proprietary processes and procedures. When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided a detailed overview of the beneficiary's duties prior to adjudication, and concluded that his knowledge and training in the Form Filing system, as well as several applications unique to the petitioner, instilled him with specialized knowledge.³ Specifically, the petitioner relies on the beneficiary's U.S. employment as evidence that the beneficiary is more than merely skilled.

Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained persons in the field and what training he had received from the foreign entity to set him apart from other similarly qualified individuals in the industry, no concrete evidence was submitted. Although the petitioner, in response to the request for evidence, indicated that the beneficiary took courses at the "petitioner's university" and also gained experience through various forms of classroom training, such as four months of training in Oracle provided by Bitech and five days of classroom training in GSMS, the petitioner provided no documentation, such as a course syllabus, training guide, or other information to actually explain the nature of the training the beneficiary received.⁴ The record contains a certificate showing

³ The AAO notes that in the initial letter of support, the petitioner claims that a large portion of the beneficiary's specialized knowledge was gained from eight months of experience working in the petitioner's United States office. Specifically, the petitioner claimed that during these eight months, the beneficiary acquired the "unique knowledge and skill required by [the petitioner] and its customer, NASD, in providing installation and production support services." This claim raises questions as to when and how the beneficiary actually acquired his specialized knowledge of the petitioner's unique processes and procedures, for it is unclear whether he possessed specialized knowledge prior to entering the United States. 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).

⁴ It is noted that, in the appeal brief, counsel claims that the petitioner does not routinely issue certificates evidencing course completions, nor does the petition keep a centralized database of records of training provided to its employees. However, considering that the claim in this matter is that the beneficiary possesses a special and advanced level of knowledge of a process unique to the petitioner, it is reasonable to expect general documentation to support the claim that the beneficiary received specialized training. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

the beneficiary's completion of Microsoft training and ASP certification, however, these applications are generally well-known by all information analysts in the industry. The AAO further notes that a certificate from Bitech, noting the beneficiary's completion of the Oracle course, indicates that the training period was just over one month, not four months as claimed by the petitioner in its January 12, 2004. 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). Furthermore, the beneficiary's resume lists a number of training courses that are not technical in nature, such as "Interviewing Skills: Preparing for an Interview;" "Interviewing Skills: Conducting an Interview;" and "Conducting Effective Interviews."

In the alternative, the record fails to sufficiently document how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. Despite the petitioner's somewhat vague explanations in response to the request for evidence, most of which merely repeat the statements deemed insufficient from the initial petition, these claims do nothing to distinguish the beneficiary from any other similarly-trained and educated person working in the information technology field. The record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field. 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).

Although newly-retained counsel submits an updated job description for the beneficiary on appeal, this list fails to establish that the beneficiary is required to possess specialized knowledge of a technology specific to the petitioner in order to successfully perform the duties of the proposed position. On appeal, counsel provided no independent evidence to support this unfounded claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

While working abroad in India for three years prior to arriving in the United States certainly gives the beneficiary an advantage in the petitioner's field and undoubtedly instilled him with familiarity in the petitioner's operations, this fact alone does not establish that the beneficiary has developed specialized knowledge under the regulatory definitions. Despite the petitioner's claims, there is no evidence in the record that the beneficiary received any specialized training in any of the applications specific to the petitioner. For example, although the petitioner claims that REM Vantive is a proprietary tool unique to the petitioner and that the beneficiary gained specialized knowledge of this tool during his eleven months offshore, the evidence contains no documentation of the actual training he received. In addition, there is no information in the record discussing this tool or confirming that it is indeed a proprietary tool unique to the petitioner.⁵

⁵ The AAO notes that counsel submits for the first time on appeal a six-page overview of the petitioner's products and services. The director, however, requested evidence of proprietary processes or products unique to the petitioner in the request for evidence. The petitioner, therefore, was put on notice of required evidence

Finally, even if the record established that this was a product unique to the petitioner, the lack of documentation regarding training provided to its employees fails to distinguish that the beneficiary's knowledge of REM Vantive is more advanced than any of the other five information analysts in the United States, or any other employees of the petitioner in general. Furthermore, there is no claim in the record that an unusual method or approach is offered by the petitioner which would preclude other persons with training in the field of information technology but which lack experience working for the petitioner, from performing the same or similar duties to those of the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

By failing to acknowledge the director's specific requests in the request for evidence, such as documentary evidence of training received or how the beneficiary's experience with the foreign entity would distinguish him from other similarly-trained persons in the industry, the petitioner has failed to show that his period of employment abroad resulted in specialized knowledge specific to the petitioner which other similarly-trained persons could not have gained from working in the industry in general.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his experience with the petitioner abroad, and that this knowledge was uncommon and distinctive from the knowledge and training of the petitioning entity's other 137,000 employees, the five other information analysts currently employed in the United States in L-1B, or other colleagues in the industry in general. No documentation was submitted that distinguishes the beneficiary from other information analysts in the industry, and no evidence of training exclusively offered to the beneficiary was provided, thereby rendering it unlikely that the beneficiary is the only employee capable of providing the stated services to the petitioner.

Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). In this case, the petitioner relies on the AAO to accept its uncorroborated assertions that the beneficiary possessed specialized knowledge at the time of filing, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. 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. Although counsel on appeal relies heavily on the Puleo memorandum in support of their contentions, the failure to provide independent

and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

documentary evidence of the beneficiary's training in a process or methodology specific to the petitioner renders it impossible for the AAO to conclude that he will be employed in a specialized knowledge capacity.

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)).⁶ 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:

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.

In the present matter, the evidence of record is minimal and severely restricts the AAO from drawing any reasonable conclusions about the beneficiary's qualifications. However, absent evidence to the contrary, it appears that at best, the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, based on his first-hand exposure to the Form Filing system, rather than an employee who has unusual duties, skills, or knowledge beyond that of an educated and/or skilled worker. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility. Many of the skills and technologies utilized in the beneficiary's current and proposed position, as indicated by the beneficiary's resume and the petitioner's letters, are common in the industry and not specific to the petitioner. Again, since

⁶ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

the petitioner has failed to demonstrate a methodology or process specific to the petitioner of which the beneficiary has obtained specialized knowledge, it is reasonable to conclude that other similarly trained persons could achieve the same level of knowledge as the beneficiary by attaining the same education and simply working in the industry for three years.

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 [REDACTED]. As discussed above, counsel's main argument on appeal is that the beneficiary's skills, and specifically his knowledge of REM Vantive, are extremely important to the petitioner, since they enable the petitioner to compete effectively in the marketplace. While this is one important factor in determining specialized knowledge, this factor alone cannot serve as the basis for the petitioner's claim. Merely asserting on appeal that the beneficiary is valuable to the petitioner's competitiveness in the industry, without discussing any other characteristics or training unique to the beneficiary to set him apart from similarly trained (and educated) persons in the United States, is insufficient to satisfy the petitioner's burden of proof. Without documentary evidence to support the claim, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Contrary to counsel's arguments, all employees, in general, 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.

The claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation that the alleged training and on-the-job experience he received in his nearly four years of employment with the foreign entity and the U.S. petitioner rendered him uniquely skilled in the area claimed. Therefore, while the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. While the beneficiary's contribution to the success of the university may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the *organization's* process and procedures or a "special knowledge" of the *petitioner's* product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). Mere skill or knowledge in the sector in general does not constitute specialized knowledge for purposes of this matter. As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge and would not be employed in the United States in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.