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File: WAC 06 098 52749 Office: CALIFORNIA SERVICE CENTER Date: **MAR 11 2008**

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

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and certified to the Administrative Appeals Office (AAO) for review as provided for at 8 C.F.R. § 103.4(a)(1). The director's decision will be withdrawn and the petition remanded to the service center for entry of a new decision.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a software test engineer I as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a "leading provider of computing and imaging solutions and services for business and home." The petitioner seeks to employ the beneficiary as a software test engineer I for a period of one year.

Citing to the anti "job shop" provisions of the L-1 Visa Reform Act of 2004, the director approved the petition as a permissible arrangement to provide labor for hire.¹ Specifically, the director concluded that the placement of the beneficiary outside the petitioning organization is in connection with the provision of a product or service and will not be in a position which is essentially an arrangement to provide labor for hire for the unaffiliated employer, in this case Motorola (hereinafter "the unaffiliated employer"). The director further determined that the beneficiary does possess specialized knowledge of a product or service specific to the petitioner.

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

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

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

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

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

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

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

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

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

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

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

Upon review of the record, the AAO withdraws the director's decision as the petition does not establish: (1) the necessary elements to overcome the L-1 Visa Reform Act of 2004, or (2) that the position requires specialized knowledge. As such, the petition will be remanded in order for the director to make a new determination consistent with the analysis and instructions provided herein.

I. L-1 Visa Reform Act

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

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

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

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

In evaluating a petition subject to the terms of the L-1 Visa Reform Act, the AAO must emphasize that the petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish both of these elements,

the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

A. Threshold Question: Worksite of Beneficiary

As a threshold question in the analysis, Citizenship and Immigration Services (CIS) must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. Section 214(c)(2)(F) of the Act.

As noted on page 3 of the Form I-129, in the field entitled “Address where the person(s) will work,” the petitioner stated that the work location for the beneficiary will be in Boulder, Colorado. The petitioner also stated in its letter of support, dated February 3, 2006, that it wishes for the beneficiary to enter the United States as a software test engineer I with the petitioner’s client, Motorola, an unaffiliated employer, located in Boulder, Colorado. Accordingly, the AAO concludes that the beneficiary will be primarily employed as a software test engineer I at the worksite of the unaffiliated employer.

Therefore, under the terms of the L-1 Visa Reform Act, the petitioner must establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

B. Control and Supervision of Beneficiary

The first issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the alien will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. Section 214(c)(2)(F)(i) of the Act.

Notwithstanding the director’s finding to the contrary, the petitioner has not satisfied this prong of the L-1 Visa Reform Act test. The petitioner asserted on the Form I-129 that the beneficiary will “continue to report to [redacted],” from the petitioner’s subsidiary located in India, and with [redacted] of Motorola during the Onsite deputation.” The petitioner does not explain how the beneficiary will be supervised by the individual located in India and the unaffiliated employer’s employee. The petitioner does not provide evidence to document how, exactly, the beneficiary will be managed and controlled while offsite at the unaffiliated employer’s workplace. Going on record without supporting evidence will not satisfy the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The director is instructed to request additional evidence to establish the control and supervision of the beneficiary. For example, the petitioner should provide information regarding the product or service to which the beneficiary will be providing specialized knowledge; the conditions of employment in the United States, e.g., who will control and supervise the beneficiary; and, information to establish that the placement of the beneficiary at the client’s worksite is not merely to provide labor for hire. The director should request copies of contracts, statements of work, work orders, and service agreements between the petitioner and the unaffiliated employer specifying the services to be provided by the beneficiary; proof

that the client purchased and received the petitioner's product or services; and, copies of the petitioner's human resource records that provide the beneficiary's job description and worksite location.

As the petitioner has not established that the beneficiary will be controlled and supervised principally by the petitioner during his employment at the unaffiliated employer's workplace, the petition may not be approved for this reason.

C. Necessity of Specialized Knowledge Specific to the Petitioning Employer

The second issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

The petitioner described the beneficiary's job duties and purported specialized knowledge in a letter dated February 3, 2006 as follows:

[The unaffiliated employer] has been developed on Microsoft Technologies involving .NET and SQL server over Windows 2003 Server as Operating System. It uses some of the latest technologies such as COM Interop, .NET Remoting, Load Balancing, Clustering, Threads, and Sockets etc. It has been successfully deployed in counties in USA. [The petitioner] presently desires the temporary services of [the beneficiary] for participating in software testing and support at our Customer Site located in Boulder, Colorado. [The beneficiary] will be working as a Software Test Engineer involved in testing the application by interfacing with the real-time interface devices and will also be providing support to the customer. Integration Testing, System Testing and Acceptance Testing will also be carried out. More specifically, she will be responsible for the following:

- Testing of the Transactions module
- Testing of the Real-Time Interface devices with the Transaction module
- Knowledge transfer to the customer
Support to the customer

* * *

[The petitioner] has over 3 years of experience in the area of testing and is very good with automation testing. She has gained specialized knowledge of the project domain and the application. She is very well versed with the processes involved in this project and different schedules which will be helpful to achieve customer satisfaction and rolling out quality deliverables. Her current project experience will be much helpful and definitely match the requirements for the proposed assignment. [The beneficiary] has been involved from the first phase of this project she will definitely be able to work with the customer and perform the assigned work or testing, support and knowledge transfer. Her exposure to the whole life cycle of the project will be very helpful in knowledge sharing, testing with real-time interface devices and automation.

Upon review, the AAO finds that the petitioner's assertions are not persuasive. First, as discussed in Part II, *infra*, the petitioner has not provided sufficient evidence to establish that the beneficiary's knowledge is "specialized." Second, the petitioner has not provided sufficient evidence to establish that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

With regard to the beneficiary's claimed knowledge, the petitioner asserts that the beneficiary has specialized knowledge specific to the petitioner's processes and procedures. Further, the petitioner asserts that the beneficiary will use his specialized knowledge of these tools in her capacity as an employee of the petitioner, which has been hired by the unaffiliated employer to implement the tools and redesign the organization's systems. The petitioner also asserts that the beneficiary was selected for this project because she has worked on the same project abroad and because the beneficiary has specialized knowledge of the unaffiliated employer's requirements.

While it is possible that the beneficiary here possesses knowledge that is directly related to both the petitioner and the unaffiliated employer's product or service, it is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that primarily requires knowledge specific to that of the petitioner. Otherwise, the beneficiary and the position for which she is being hired would fall squarely within the prohibition imposed by the L-1 Visa Reform Act of 2004 on the "outsourcing" of L-1B nonimmigrants who do not have specialized knowledge related to the provision of a product or service specific to a petitioner.

In this matter, the petitioner's major failing with regard to this issue was in not providing corroborating evidence that the beneficiary would be employed in a position that primarily requires specialized knowledge of a product or service specific to the petitioner. In other words, whether the beneficiary possesses knowledge of a product or service specific to the petitioner is irrelevant if the position in which he will be employed will not primarily require the use of this knowledge. The petitioner did not provide sufficient evidence regarding the manner in which the alien will be employed, or evidence of the beneficiary's specific work assignment and services the beneficiary will provide to the unaffiliated employer. Other than the unsupported assertions of the petitioner, there is nothing in the record to support the claim that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge *specific to the petitioning employer* is necessary. All that is clear is that the beneficiary will test a computer-aided design (CAD), jointly developed by both the petitioner and the unaffiliated employer. This vague description is insufficient to establish that this knowledge is either specialized or primarily specific to the petitioner. As the record does not contain sufficient evidence of the specific duties the beneficiary would perform for the petitioner's client, the AAO cannot analyze whether her placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Accordingly, the petitioner did not meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

II. Specialized Knowledge

Beyond the decision of the director, even if the beneficiary's knowledge were proven to be specific to the petitioning employer, the petitioner has not established that this knowledge is specialized as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and that the beneficiary has been or will be employed in a specialized knowledge capacity.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, the petitioner fails to establish that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

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

Specifically, while the petitioner asserts that the beneficiary will be utilizing the latest Microsoft Technologies, the petitioner did not submit evidence to demonstrate that the knowledge of these tools is specialized and that the beneficiary actually possesses this knowledge. More specifically, there is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that her level of knowledge is comparatively "advanced." Although there is no requirement that the beneficiary must develop the internal methodologies and processes, this may constitute evidence of an advanced knowledge of the petitioner's internal processes that could demonstrate that the beneficiary possesses a specialized knowledge. In addition, there is no evidence on record to suggest that the processes and technology pertaining to the programming positions for the petitioner are different from those applied for other companies providing software consulting services "developed on Microsoft Technologies." While individual companies will develop a computer system tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

Despite the petitioner's assertions, the petitioner has not established that the beneficiary's knowledge of software engineering, either in the context of the ongoing project being performed for the unaffiliated employer or in connection with her employment with the petitioner abroad, constitutes "specialized knowledge." The record does not reveal the material difference between the beneficiary's knowledge of

the engineering tools and the ongoing implementation project and the knowledge possessed by similarly experienced software engineers in the industry or employed by the petitioner's organization. Without producing evidence that the petitioner's software engineering services are different in some material way from similar services offered on the market by similarly experienced software professionals, the petitioner cannot establish that the beneficiary's knowledge is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by similarly experienced personnel engaged within the beneficiary's field of endeavor. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced software engineer who has been, and would be, a valuable asset to the petitioner's organization and to the unaffiliated employer. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. 49, 52 (Comm. 1982). Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the

beneficiary to the level of “key personnel.”

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

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

A 1994 Immigration and Naturalization Service (now CIS) memorandum written by the then Acting Executive Associate Commissioner also directs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Executive Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Memorandum from James A. Puleo, Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (Mar. 9, 1994). A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider

whether workers are available in the United States to perform the beneficiary's job duties.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other similarly experienced persons employed by the petitioner's organization or in the industry generally. As the petitioner has failed to document any materially unique qualities to the petitioner's processes and procedures, the petitioner's claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a "key" employee. There is no indication that the beneficiary has knowledge that exceeds that of any software engineers with experience with programming tools and implementation, or that she has received special training in the company's methodologies or processes which would separate her from any other persons employed with the petitioner's organization or in the industry at large.

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

As the petitioner did not have sufficient notice of the deficiencies in its evidence, the petition will be remanded, and the petitioner shall be given the opportunity to submit additional evidence to establish the beneficiary's specialized knowledge qualifications and prove that the petitioner will comply with the L-1 Visa Reform Act of 2004 in its sponsorship and employment of the beneficiary in this matter. The director is instructed to issue a request for evidence addressing the issues discussed above and requesting any other evidence deemed necessary.

ORDER: The decision of the director, dated February 17, 2006, is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.