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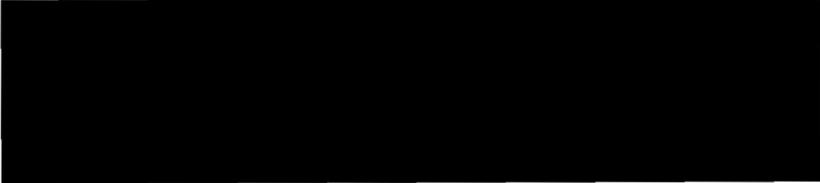
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: WAC 07 230 50343 Office: CALIFORNIA SERVICE CENTER Date: **MAY 20 2008**

IN RE: Petitioner:
Beneficiary:



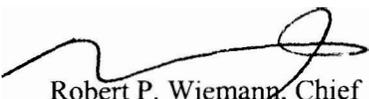
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of "electrical field engineer" 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, a Delaware corporation, describes its business in the Form I-129 as "engineering and construction." The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary possesses specialized knowledge; or (2) that the beneficiary has been employed abroad, or will be employed in the United States, in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Counsel also argues that the director applied an overly restrictive and outdated definition of "specialized knowledge."

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.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been

and will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. § 214.2(l)(3)(ii) and (iv).

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

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

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

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

The petitioner describes the beneficiary's duties abroad, proposed duties in the United States, and claimed specialized knowledge in a letter dated July 25, 2007 as follows:

[The beneficiary] will utilize his specialized knowledge of [the petitioning organization's] proprietary technologies, processes, and procedures in support of project activities. [The beneficiary] will be responsible for providing technical direction and assistance to Electrical Superintendents. He will continuously perform inspections of all electrical work in progress and complete a final checkout of electrical installations to ensure quality and conformance to [the petitioning organization's] specifications and codes. He will assist in the establishment of detailed work plans and schedules in line with [the petitioning organization's] Engineering Department Procedures. [The beneficiary] will coordinate with Technical Advisors and Engineering to resolve drawings and [The petitioning organization] Setroute issues. He will review vendor drawings, Engineering documents, wiring details, and cable schedule and schematic diagrams to ensure compliance with [the petitioning organization's] proprietary procedures. Furthermore, [the beneficiary] will be responsible for preparing, reviewing, and interpreting calculations and specifications to meet project milestones. Additionally, [the beneficiary] will assist with quality assurance schedules and prepare project specific designs and procedures to meet [the petitioning organization's] standards.

* * *

These job duties require not only [the beneficiary's] academic background in Electrical Engineering, but also his specialized knowledge of [the petitioning organization's] proprietary processes, procedures, and technologies such as Bechtel Engineering Department Procedures, Bechtel Design Guides and Standards, Bechtel Standard Application Programs, Bechtel Setroute, Bechtel InfoWorks, Bechtel TeamWorks, Bechtel Electrical Installation Procedures,

Bechtel Document Processing Tools, and other internal and external proprietary processes and procedures that [the beneficiary] gained as an employee of [the petitioning organization]. [The beneficiary's] advanced knowledge of [the petitioning organization's] processes and procedures cannot be easily duplicated, and it is not possible to easily or quickly train a U.S. worker to undertake the proposed job duties in the United States.

* * *

The petitioner also asserts that the beneficiary's proposed duties in the United States will "closely mirror" his duties abroad.

On August 11, 2007, the director requested additional evidence. The director requested, *inter alia*, explanations addressing how the beneficiary's duties differ from those of other workers and how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality not generally known by practitioners in the beneficiary's field of endeavor.

In response, the petitioner submitted a letter dated September 24, 2007 in which it further describes the beneficiary's duties and claimed specialized knowledge as follows:

The most important experiential knowledge involved in the position regards [the petitioning organization's] proprietary procedures and technologies. [The petitioning organization's] proprietary procedures and technologies have required significant investment of [petitioning organization] work hours to develop, create, enhance and maintain. The applications are *not* available outside of [the petitioning organization]. These proprietary applications are written, developed, and/or customized internally, and *exclusively*, within [the petitioning organization]. Cumulatively, many thousands of [petitioning organization] man-hours have been expended to develop, create, enhance and maintain such applications. Because of their complexity, their unique features, and the demand for performance, the Electronic Field Engineer position that utilizes these applications could not possibly be entrusted to parties who did not have significant experience with our organization's proprietary processes, procedures, and technologies.

Nearly six years of experience, let alone knowledge of, [the petitioning organization] is extremely rare in the [petitioning] organization, and there are no employees outside of the [petitioning] organization who would have equivalent qualifications. This company-specific knowledge is unique within the industry and cannot be duplicated by peers with similar levels of education or training who will not have any experience working with these [petitioning organization] proprietary technologies.

It would take well over a year of training investment to match the specialized knowledge [the beneficiary] gained at [the petitioning organization] abroad in Bechtel Setroute, InfoWorks, TeamWorks, Procurement Tracking System, Bechtel Procurement System, Bechtel Standard Application Programs, and other internal and external proprietary technologies, which is why

he was selected for the U.S. position.

The petitioner also specifically described projects on which the beneficiary has worked abroad. It is alleged that the beneficiary used his claimed specialized knowledge of the petitioning organization's processes and procedures while working on these projects. For example, concerning a project in Kazakhstan, it is alleged that the beneficiary utilized his claimed specialized knowledge of the organization's "proprietary technologies, processes, and procedures" in leading the installation of electrical equipment, instrument cabling, and pre-commissioning of the power generation area.

The petitioner further described the beneficiary's acquisition of his claimed specialized knowledge in the September 24, 2007 letter as follows:

Putting aside [the beneficiary's] rare and directly relevant experience with [the petitioning organization's] proprietary processes, procedures, and technology, he also has a strong palette of experience gained working for over five years and nine months with [the petitioning organization's] proprietary tools, processes and, [sic] procedures that [are] also not available outside of our organization. The value of this background cannot be underscored as it takes significant time for [the petitioning organization] to train its Electrical Field Engineers, even those entering [the petitioning organization] with prior engineering background, to, for lack of better words "speak our language" and perform Advanced Engineering tasks we can entrust to an Electrical Field Engineer at the level of [the beneficiary]. We use internal tools and procedures that take several months to a year to develop a sufficient understanding of, such as Bechtel Electrical Installation Procedures, Bechtel Standard Application Programs, and Bechtel Design Guides and Standards. This company-specific knowledge is unique within the industry and cannot be duplicated by peers with similar levels of education or training who have not gained experience working at [the petitioning organization] or its subsidiaries.

To better illustrate, [the beneficiary] has been trained in, and shown considerable expertise in the following [petitioning organization] internal proprietary technologies:

Bechtel's Setroute: An electrical commodity tracking tool that engineering uses for raceway input, cable routing and cable terminations. Same tool is used to track the progress of both engineering and construction.

Bechtel's InfoWorks: [The petitioning organization's] enterprise document and configuration management system. It manages the life cycle of documents from creation, review, approval, distribution, revision, and archiving through customer turnover for projects and other work groups.

Bechtel TeamWorks: [The petitioning organization's] interlinked software with 3D modeling/Piping & Instrumentation Diagrams and Materials. Tracks the status of the individual entities in projects where materials are to be bought from other vendors.

Bechtel Procurement Tracking System: Effectively tracks material through engineer design specifications to vendor sourcing, bid evaluations and placement of orders, expediting, inspection, shipment and reception.

Bechtel Procurement System: This system is a front-to-back tracking program used for Material Requisitions. It allows the forecast of material needs and deliveries to ensure arrival when needed.

Electrical Transient Analyzer Program: A software tool used to analyze electrical system characteristics and perform a variety of calculations including load flow, short circuit, motor starting, transient stability, harmonic, underground raceway system analysis, and ground grid sizing.

Finally, the petitioner claims that "there are no employees outside of [the petitioning] organization" who share the beneficiary's level of experience and knowledge of its processes and procedures and that his knowledge "cannot be duplicated by peers with similar levels of education or training who will not have any experience working with these Bechtel proprietary technologies." The petitioner described the beneficiary's training in its processes and procedures as follows:

[The beneficiary] has spent significant time and energy to develop his specialized knowledge of [the petitioning organization's] processes and procedures. In addition to his on the job training, he has utilized Online Bechtel University to complete the following: Electrical Equipment Installation, Cathodic Protection, Electrical Heat Tracing, Lighting Installation, Construction Surveying, Construction Project Site Setup, Construction Project Site Close-out, Request for Information, Lessons Learned, and Performance Based Leadership. [The beneficiary] has been recognized for his completion of Introduction to Rigging Workshop, and received certificates in "Permit to Work," "Safety Task Analysis," and "Lockout and Tagout Verification." Additionally, his support of [the petitioning organization's] projects has also allowed his to gain insight into [the petitioning organization's] operations internationally in Holland, Turkey, Kazakhstan, and India.

On October 12, 2007, the director denied the petition. The director concluded that the petitioner failed to establish: (1) that the beneficiary possesses specialized knowledge; or (2) that the beneficiary has been employed abroad, or will be employed in the United States, in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity and that the beneficiary has specialized knowledge. Counsel also argues that the director applied an overly restrictive and outdated definition of "specialized knowledge" in her adjudication of the petition. Specifically, counsel argues that the director used a definition of specialized knowledge which predates the inclusion of the current statutory definition in the Immigration and Nationality Act in 1990 which is inconsistent with subsequent policy memoranda interpreting "specialized knowledge," in particular a 1994 memorandum issued by the legacy Immigration and Naturalization Service. Memorandum from James A. Puleo, Acting Executive Associate

Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994).

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has specialized knowledge or that he was employed abroad, or will be employed in the United States, in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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

Although the petitioner repeatedly asserts that the beneficiary's positions abroad required "specialized knowledge," and that the beneficiary will be employed in the United States in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced and educated electrical field engineers employed by the petitioning organization or in the industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioning organization's "proprietary" processes, procedures, and technologies such as "Bechtel Engineering Department Procedures, Bechtel Design Guides and Standards, Bechtel Standard Application Programs, Bechtel Setroute, Bechtel InfoWorks, Bechtel TeamWorks, Bechtel Electrical Installation Procedures, Bechtel Document Processing Tools, and other internal and external proprietary processes and procedures" that the beneficiary gained as an employee of the petitioning organization.

However, despite this claim, the record does not establish how, exactly, the these "proprietary" processes, procedures, and technologies are so materially different from the processes, procedures, and technologies utilized by electrical field engineers in general that a similarly experienced and educated engineer employed by the petitioning organization or in the industry at large could not perform the duties of the position. Simply asserting that the processes and technologies are proprietary will not suffice. The petitioner never establishes the difference between the petitioner's processes, procedures, and technologies and those processes, procedures, and technologies used in the construction and engineering industry which requires noteworthy, distinguished, or uncommon knowledge not possessed generally by similarly educated and experienced electrical field engineers. Although the petitioner claims that the processes, procedures, and technologies are "complex" and have "unique features," the petitioner never clearly explains what complexities and unique features make this knowledge inconvenient to impart to another similarly educated and generally experienced engineer without significant economic inconvenience to the petitioning organization. Once 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by electrical field engineers generally throughout the industry or by other employees of the petitioning organization. The fact that few other engineers possess very specific knowledge of certain aspects of the petitioning organization's "proprietary" processes, procedures, and technologies does not alone establish that the beneficiary's knowledge is indeed uncommon, advanced, distinguished, or noteworthy. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be imparted to another similarly educated and generally experienced engineer is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's processes, procedures, or technologies do not establish that any knowledge of these is "specialized" or "advanced." Rather, the petitioner must establish that qualities of the processes, procedures, and technologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other engineers may not have very specific, proprietary knowledge regarding the petitioner's processes, procedures, or technologies is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced electrical field engineer.

Furthermore, while the petitioner asserts that the beneficiary acquired his purported "specialized knowledge" through both work experience and training, the record is not persuasive in establishing that either of these methods truly imparted "specialized knowledge" to the beneficiary. First, the record is devoid of persuasive evidence establishing that the beneficiary's experience with the petitioning organization abroad instilled him with specialized knowledge. The petitioner fails to explain what specific knowledge of the petitioning organization's processes, procedures, or technologies is advanced or to establish why it would take "well over a year of training investment" to impart this knowledge to a similarly employed person and under what conditions. The petitioner's claim that it would take "significant time" to teach a newly hired electrical field engineer to "speak our language" is simply not persuasive in establishing that knowledge of the petitioning organization's processes, procedures, and technologies constitutes specialized knowledge which cannot be imparted to a similarly educated electrical field engineer without significant economic inconvenience to the petitioning organization.

Second, the record is not persuasive in establishing that the training courses listed in the record imparted specialized knowledge to the beneficiary. The "online" training courses outlined by the petitioner do not clearly relate to the beneficiary's purported specialized knowledge. Instead, this training appears to relate generally to construction and engineering matters. Also, the record is devoid of evidence establishing how long this training lasts, the expense to the company, and whether other employees are provided with similar training. The petitioner has not established that the provision of the training is necessary to impart the specialized knowledge, that a substantial number of other similarly employed workers do not also have the specialized knowledge, or, crucially, that the provision of the training to other similarly educated and employed workers would be economically inconvenient to the petitioning organization. Absent evidence establishing that the knowledge imparted by the training sessions is not possessed by other similarly

employed workers, the knowledge gained would not be uncommon, advanced, or noteworthy.

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

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

Id. at 53.

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

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. REP. NO. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the 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*, 18 I&N 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.”)

As cited above, a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Executive Associate Commissioner also directs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Executive Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Memorandum from James A. Puleo, Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary’s job duties. Furthermore, and as applied above, it is crucial that the petitioner establish that the beneficiary’s knowledge would be difficult to impart to another individual without significant economic inconvenience and that the knowledge be set apart from elementary or basis knowledge. In this matter, the petitioner failed to establish that the beneficiary’s knowledge of the petitioning organization’s processes, procedures, and technologies would be difficult to impart or that this knowledge can be set apart from that possessed by other electrical field engineers.

As the petitioner has failed to document any materially unique qualities to the beneficiary’s knowledge, the petitioner’s claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would

possess a special or advanced level of knowledge. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced engineer or that he has received special training in the company's methodologies or processes which would separate him from other engineers employed with the petitioning organization or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

The legislative history of the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary will not be employed in the United States, and was not employed abroad, in a capacity involving specialized knowledge. For these reasons, the director's decision will be affirmed and the petition will be denied.

Although the above 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 Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990), did not significantly alter the definition of "specialized knowledge" from the prior Immigration and Naturalization Service (INS) interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. REP. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.