

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

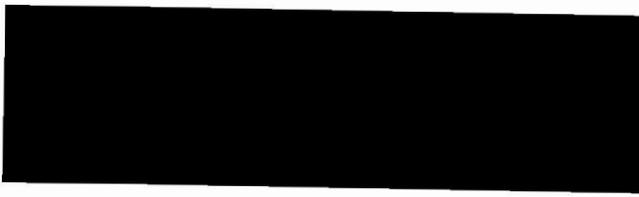
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D-7

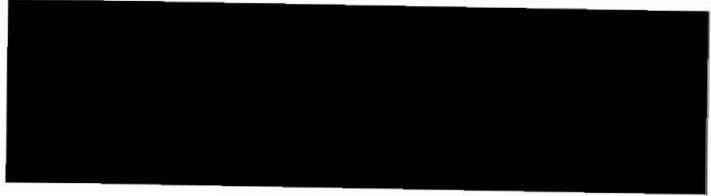


File: LIN 05 106 52016 Office: NEBRASKA SERVICE CENTER Date: **MAY 30 2008**

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

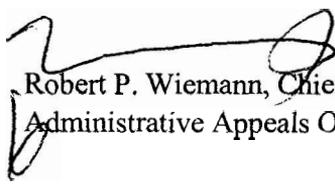
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration
And Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Washington corporation, states that it sells and services specialized electronic equipment manufactured by its parent company, Icom, Inc., located in Japan. The petitioner seeks to employ the beneficiary in the position of market analyst/special liaison for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position requires an individual with 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 asserts that the director failed to consider the evidence submitted by the petitioner and implicitly applied a standard for specialized knowledge "which has no basis in regulation, case law, or logic." Counsel submits a brief in support of the appeal.

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

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has 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 nonimmigrant petition was filed on February 25, 2005. In a letter dated February 18, 2005, the petitioner noted that the U.S. company sells, services and modifies specialized electronic communication equipment produced by its Japanese parent company, including amateur, marine, land mobile and avionics products. The petitioner described the beneficiary's experience with the foreign company as follows:

[The beneficiary] has been employed by [the foreign entity] in Japan since April 1, 1992. He has held increasingly responsible positions, beginning as a factory staff member then serving as a sales staff member in the Export Department from 1997 to 2001; as a Senior Staff/Section Leader in the Sales Support Section of the Export Department from 2001 to 2003; and as Manager of Market Research in the Strategy Planning/Product Strategy Department from 2003 to present. In his current position, [the beneficiary's] responsibilities include researching both technical and commercial aspects of new product concepts on a worldwide basis; researching OEM (original equipment manufacturer)/Partnership issues and other relevant legal issues; analyzing sales results and market information; and participating in the build-up of new product concepts, product road maps and product strategies/policies. He also assists product planners in designing work-flow schemes, and provides coordination/liaison between the advertising, sales and engineering staff.

The petitioner further described the specialized knowledge gained by the beneficiary during his assignments with the foreign entity:

[The beneficiary] has gained specialized knowledge of [company] products, services, methods of research, analytical techniques, organization, philosophy of management and manufacturing strengths that far surpasses the ordinary knowledge of an employee in the field of electronics and communication equipment marketing. He has an advanced level of expertise and proprietary knowledge regarding [the company's] products which is very valuable to the company's competitiveness.

In addition to his in-depth experience with marketing [the company's] technical products internationally, [the beneficiary] has extensive knowledge of [the company's] corporate organization that allows him to work between divisions, headquarters and overseas subsidiaries to get decisions made quickly and properly. Since [the company] is a large, complex multi-national firm with large lines of products in separate specialty fields, the ability to develop support for new and/or nontraditional products can be a delicate political issue within the established corporate organization. [The beneficiary] has demonstrated he possesses the knowledge to work successfully between potentially conflicting [company] departments. This level of knowledge of the organization not only takes years to develop, but is extremely valuable in improving our international competitiveness since decisions can be made much faster. An ordinary individual with knowledge of marketing but no in-depth knowledge of [the company] would not be effective in overcoming institutional hurdles. This kind of knowledge can be gained only through extensive prior experience with the company.

Finally, the petitioner described the beneficiary's proposed U.S. position as follows:

In this position, [the beneficiary] will use the extensive knowledge gained through his experience with [the company] in Japan to conduct market analysis to identify target markets; conduct competitive analysis to understand the competitors' marketing and product strategies; and participate in product planning, purchase decisions and market strategies. His duties will include identifying [the company's] customers' needs and wants through market research and analysis, providing and interpreting data to assist in product planning and positioning. He will also work with division managers to develop marketing strategies for each division, including needs analysis, identifying target markets and measuring results of strategies implemented. [The beneficiary] will also work with the Product Division Manager to execute product strategies and all aspects of the selling process.

In addition, [the beneficiary] will liaise between [the petitioner] and [the foreign entity] and will be responsible for accurate communication to and from [the foreign entity] regarding OEM, new business and new product requests. He will assist [the petitioner's] Management Team and [the foreign entity] in improving the interchange of ideas between [the petitioner] and [the foreign entity]. This will differentiate [the petitioner] from the competition and set the highest standards in the communications industry.

The petitioner submitted the foreign entity's annual report and a product brochure for its communications receivers in support of the petition.

The director issued a request for evidence on March 31, 2005, in which the petitioner was advised that the evidence submitted with the initial petition was inadequate to establish that the beneficiary possesses specialized knowledge or that he will be employed in a position involving specialized knowledge. The director observed that many of the duties described in the petition "appear to be general market research and analysis functions routinely performed throughout the industry." The director further noted that the evidence did not establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners who are similarly educated and/or engaged within the industry. Accordingly the director instructed the petitioner as follows:

Due to the wide variety of duties, the Service is unable to determine the duties that the beneficiary has and will perform on a daily basis. Therefore, please submit a complete, detailed description of the duties to be performed by the beneficiary in the United States and the percentage of time the beneficiary will spend performing each duty. In addition, please submit a complete, detailed description of the alien's current duties for the employer abroad. . . . The description should detail the routine, day-to-day tasks performed by the beneficiary within the foreign entity as well as the percentage of weekly hours expended in the performance of each tasks that is identified.

* * *

Please note that if the petitioner contends that the beneficiary possesses an advanced or unique knowledge of the processes, procedures, research, equipment, techniques, management, and /or other interests of the company (including its products/services, then evidence must be submitted to describe and distinguish that knowledge from the elementary or basic knowledge possessed by others who are similarly employed within the same occupation/industry (and who regularly utilize similar system, programs, products, processes and/or procedures). In addition, the evidence submitted must establish that the beneficiary's duties abroad for the qualifying organization AND the alien's proposed duties in the United States require a person with "specialized knowledge."

Furthermore, if the beneficiary attended any company-specific vocational, technical, and/or professional development courses which are related to the company's equipment, products, processes and/or procedures, please provide additional documentation which supports that claim, i.e., diplomas, course completion certifications, etc. The documentation that you provide must identify the school/course and the alien by name, identify the inclusive period of study, and specify in detail the course content.

If the beneficiary acquired his specialized knowledge only through practical employment experience, please describe in detail how the beneficiary's training and/or work experience differs from the training and experience an individual would receive whom is similarly engaged within the industry.

In a response dated April 14, 2005, the petitioner asserted that contrary to the director's suggestion, the duties of the offered position "are not 'general market research and analysis functions.'" The petitioner stated that it is a "unique position" involving special liaison between the petitioner and its parent company, and noted that the position had been approved four times for previous L-1B beneficiaries. The petitioner further explained as follows:

The reason that an individual has been specifically selected from [the foreign entity] to function as the liaison is that only an individual who has both advanced knowledge and the personal understanding of and credibility with the [foreign entity's] management team in Japan is going to be able to effectively influence [the company's] product development, market strategy for products, services and prices, and responsiveness to our North American customers. This position is far more than doing market research in an industry. The individual is responsible for not just conducting market research but also for coordinating the company's

response to the analysis. Seventy to eight percent of the duties require the ability to coordinate the Japanese parent and U.S. responses effectively The majority of the time will focus on four basic functions: handling new product and business requests from customers, OEM (Original Equipment Manufacturer) partners and the marketing division in the U.S. and then developing the requests by filing the requests, identifying the interested individuals in Japan, coordinating the meetings and following up through the process; acting as liaison between [the petitioner] and [the foreign entity], including responsibility for drafting communications, translating key documents, and determining the proper channels within the company to solve issues which arise with new OEM partners and bringing the issues to timely conclusions; analyzing and matching market demand with [the foreign entity's] technical and market resources, priorities and strategic plans; and identifying market needs and working with [the foreign entity] in product development and positioning. In each case, the individual in this position will assist [the petitioner's] Management Team and [the foreign entity] in improving the interchange of ideas between [the petitioner] and [the foreign entity].

These duties are such that an individual who is knowledgeable in market analysis would still be unable to fulfill any of the duties that require advanced knowledge of [the foreign entity's] management, operations, strategic plans, product development processes and internal politics. The coordination/liaison duties require an individual who has worked in key departments in the parent company. Without knowing the management of each department, the relationships between the departments, the history of the products within the organization, and the culture of the company, it would not be possible to quickly and effectively translate the North American customers' needs into product development and marketing programs. Without specific experience with developing OEM relationships for [the foreign entity], and individual would lack the basis for any judgment to determine which prospective partners were good technical fits for specific individual products, which were inconsistent with [the company's] own plans for new products, and what terms would be best for the partnerships. Lacking that judgment, it would not be possible to advocate effectively for taking risks in new relationships.

These duties are more complex because of the range and technical sophistication of our products. [The petitioner] sells, services and modifies highly specialized electronic communication equipment produced by our Japanese parent company, including amateur, marine, land mobile and avionics products. [the petitioner] manages the sales and marketing in the United States, Mexico and parts of South America. We purchase 95% of our electronic communication equipment for [the parent company] in Japan for sale in the United States. We currently employ 96 personnel in the United States. . . We have many marketing and marketing analysts on staff. We have only a single special liaison person.

The petitioner further emphasized that the beneficiary has been employed by the parent company for more than 13 years, and has acquired experience with production, engineering, sales, new products, OEM and market research. The petitioner further stated that due to the beneficiary's experience in all of these areas, "the depth and breadth of his experience is more advanced than typical for the ordinary in our company." The petitioner further described the beneficiary's current duties as follows:

In his current position, [the beneficiary's] responsibilities include researching both the technical and commercial aspects of new product concepts on a worldwide basis; researching OEM Partnership issues and other relevant legal issues; analyzing sales results and market information; and participating in the build-up of new product concepts, product road maps and product strategies/policies. He also assists product planners in designing work-flow schemes, and provides coordination/liaison between the advertising, sales and engineering staff. In each of these positions, he has gained specific working knowledge in the way decisions are made. He has gained judgment from progressively responsible positions. His special technical knowledge of [the petitioner's] products, services, methods of research, analytical techniques, and OEM partnerships as well as his advanced personal knowledge of the key managers in the organization, philosophy of management and manufacturing strengths far surpasses the ordinary knowledge of an employee in the field of electronics and communication equipment marketing. [The beneficiary] has an advanced level of expertise and proprietary knowledge regarding [the petitioner's] products, personnel, corporate organization and processes which is very valuable to the company's competitiveness.

The petitioner further emphasized that the beneficiary "has special in-depth experience with [the petitioner's] corporate organization that allows him to work between divisions, headquarters and overseas subsidiaries to get decisions made quickly and properly." The petitioner explained that "the ability to develop support for new and/or nontraditional products can be a delicate political issue within the established organization," and stated that the beneficiary "possesses the knowledge to work successfully between potentially conflicting [company] departments." The petitioner concluded that this level of knowledge of the organization takes years to develop such that an ordinary marketing specialist with no in-depth knowledge of the company would be unable to overcome "institutional hurdles."

The petitioner also submitted a position description for the proposed role which includes the percentage of time the beneficiary will spend on each of his duties as a market analyst/special liaison:

10% - Identify [the petitioner's] customer needs and wants through market research and analysis providing data to assist in [the foreign entity's] product planning and positioning. Work with division managers to develop marketing strategies for each division, including needs analysis, identifying target markets, and measuring results of strategies implemented.

10% - Conduct competitive analysis to understand our competitors' marketing and product strategies.

25% - Handle new product requests including filing, coordinating meetings and communication with Japan.

20% - Liaison between [the petitioner] and [the foreign entity] responsible for effective and accurate communication/translation to and from [the foreign entity] with the appropriate managers.

25% - analyze and match market demand and [the foreign entity's] resources, priorities and strategic plans.

10% - Identify market trends and gather sales/marketing information to assist the company in achieving 100% of sales goals.

According to the job description, the position requires a high level of fluency in oral and written Japanese and English, including experience translating, understanding of Japanese culture and business etiquette, at least five years of experience in international sales distribution, the ability to solve problems related to market and pricing analysis, and knowledge of the group's "management, product design and operation." The description indicates that that the job requires "use of good judgment, understanding of international business issues and proper Japanese protocol."

The petitioner submitted copies of five Forms I-797 Approval Notices granting five different beneficiaries L-1B status to work for the petitioning company, dating back to 1993.

The director denied the petition on April 20, 2005, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in a capacity involving specialized knowledge. The director found insufficient evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners who are similarly employed in the beneficiary's field, or that the position in the United States requires a person with "specialized knowledge" as that term is defined in the regulations.

The director acknowledged the petitioner's claim that the beneficiary's knowledge was gained over thirteen years of work experience with the foreign entity, and is more advanced in depth and breadth compared to an ordinary employee within the company. However, the director noted that the petitioner provided no independent corroborating evidence that sets the beneficiary apart from all other employees who have gained similar expertise working for the foreign entity for a similar duration of time.

Finally, the director acknowledged the petitioner's submission of Form I-797 Approval Notices for previous L-1B petitions filed by the U.S. company, but noted that: (1) the petitioner did not provide evidence that the facts of the referenced cases are analogous to the facts and circumstances of the instant case; and (2) notwithstanding the prior approvals, USCIS is not required to approve petitions where eligibility has not been demonstrated.

On appeal, counsel asserts that the director's decision "defies simple common sense," and "implicitly applies a standard for specialized knowledge which has no basis in regulation, case law, or logic." Counsel alleges that it was "absurd" for the director to conclude that the beneficiary's 13 years of experience with the foreign entity did not give a level of knowledge beyond what is commonly known in his field, noting that he was chosen for the offered position precisely because of his experience with the foreign entity, and that he performs duties beyond those typically performed by a "skilled worker."

Counsel explains that the U.S. company is primarily a sales and marketing company, which needs to be able to effectively and quickly adapt its parent company's products and strategies to adapt to U.S. customer demands. Counsel notes that "the petitioner's market analysis must be translated into effective action from the larger and more complex parent company," and states that "the politics of decision making in any large organization are complex and specific to that organization."

Counsel further emphasizes that while the U.S. company has a large and effective marketing and market analysis staff, it maintains a single market analyst/special liaison person. Counsel again states that the duties of the offered position are unique and do not comprise "general market research and analysis functions." Counsel claims that the position has been approved four previous times for L-1B applicants, all of who were key individuals "with the experience and stature in [the foreign entity] to make the function work."

Counsel further explains the need for a specialized knowledge worker to fill the proffered position:

Seventy to eight percent of the daily duties of the position . . . require this specialized and advanced level of knowledge of [the foreign entity]. Only an individual who has both the advanced knowledge and the personal understanding of and credibility with management in Japan is going to be able to effectively influence [the foreign entity's] decision-making in product development quickly enough to capitalize on quick changing market opportunities. Merely sending a report is not effective. Having the personal knowledge of who the decision makers are and who is likely to support and oppose the proposal so that an effective strategy can be mapped out is crucial. The Special Liaison can frame the market analysis for the audience (managers he personally knows and understands). He can coordinate the meetings. He is aware of the other factors which may influence or compete with these proposals. He can also work with the U.S. division managers in terms of what the parent company realistically can and will do. This is essential for having a realistic market strategy for products, services, prices and responsiveness to North American customers.

Each of the four basic functions of this position requires this specialized knowledge to perform effectively: handling new product and business requests from customers, OEM partners and the marketing division in the U.S. and then developing the requests by filing the requests, identifying the key interested individuals in Japan, coordinating the meetings and following up through the process; acting as liaison between [the petitioner] and [the foreign entity] with responsibility for drafting communications, translating key documents and determining the proper channels within the company to solve arising issues including new OEM partners in a timely fashion; analyzing and matching market demand with [the foreign entity's] technical and market resources, priorities and strategic plans; and identifying market needs and working with [the foreign entity] in product development and positioning.

Counsel further states that the beneficiary's "advanced knowledge makes the company more competitive internationally. The specialized knowledge required in this position is the reason that new products and adjustments in strategy are made more quickly and effectively between [the petitioner] and [the foreign entity]." Counsel concludes that "the position requires specialized knowledge of [the foreign entity's] management and internal processes as well as an advanced level of knowledge of its products, OEM practices, product development priorities and budgets and markets."

Upon review, counsel's assertions are not persuasive. The petitioner has failed to establish that the beneficiary possesses specialized knowledge 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 and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the beneficiary's current and proposed duties sufficient to establish that they involve specialized knowledge. *Id.*

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. See *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)).¹

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' operation.

Id. at 53.

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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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, supra* at 50 (citing H.R.

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS 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.

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 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.*, 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.")

Thus, based on the intent of Congress in its creation of the of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee classification. 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 that employee and the remainder of the petitioner's workforce.

As a preliminary matter, the AAO acknowledges that the petitioner has established that successful performance of the duties of the market analyst/special liaison position does require the services of an individual with prior experience with the petitioner's foreign parent company. The AAO is satisfied that the position requires a degree of familiarity with the foreign entity that would not be readily available in the general labor market, or, specifically, among market research professionals who had worked for similar companies in the industry. However, the petitioner has failed to establish that the beneficiary possesses specialized knowledge, that he has been employed in a position requiring specialized knowledge with the foreign entity, or that the knowledge required for the U.S. position rises to the level of "specialized knowledge."

Here, the petitioner's claim that the beneficiary possesses specialized knowledge is undermined by its failure to adequately describe and document the beneficiary's claimed specialized knowledge and his experience with the foreign entity. The petitioner claims that the beneficiary has "special knowledge" of the company's "products, services, methods of research, analytical techniques, organization, philosophy of management and manufacturing strengths," gained over 13 years of employment with the foreign entity. However, the petitioner failed to describe the beneficiary's work experience in any detail nor did it explain how such work experience differentiates his knowledge from that held by other similarly employed workers in the industry and within the foreign company. The petitioner provided no descriptions of the beneficiary's duties in his previous positions as a "factory staff member," "sales staff member," or "senior staff/section leader, sales support section," which he held from 1992 until 2003. It cannot be concluded that such experience imbued the beneficiary with his claimed "advanced level of expertise and proprietary knowledge" regarding the company's products, or his "in-depth experience with marketing [the petitioner's] products internationally." 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 record contains no detailed employment history for the beneficiary, and the petitioner does not claim that he received any special training, such that the AAO could determine exactly what "special" or "advanced" knowledge the beneficiary possesses or how he acquired it. While the petitioner provided a brief description of the beneficiary's current duties abroad as a manager of market research in the foreign entity's product strategy department, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other market research professionals employed by the foreign entity.

When asked to explain in detail how the beneficiary acquired his claimed specialized knowledge and to describe how the beneficiary's work experience differs from that of similarly-employed workers, the petitioner explained that the beneficiary is "a veteran of the parent company whose technical skills and level of knowledge of the company were concentrated in those aspects most critical to the current challenges of the company." The petitioner also emphasized the beneficiary's "13+ years in the company in strategically important divisions," and his "experience and stature" within the foreign entity. The petitioner stated that the beneficiary worked in "production, engineering, sales, new products, OEM and market research," and noted "the depth and breadth of his experience is more advanced than typical for the ordinary employee in our company." This explanation is written in broad and conclusory terms and offered little insight into exactly what the beneficiary's specialized knowledge is or how he gained it during his employment with the foreign entity. The petitioner did not describe the beneficiary's "technical skills" or identify what aspect of his experience is so critical to the company. 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)).

The petitioner implies that merely working for the foreign entity for a significant length of time in progressively responsible positions is sufficient to bestow "special knowledge" or an "advanced level of knowledge." While it may be correct to say that the beneficiary is a productive and valuable employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel." The petitioner's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any experienced employee to enter the United States as a specialized knowledge worker. The fact that the beneficiary was

chosen for transfer to the United States, without more, does not establish that his knowledge of the company's products or processes is advanced compared to the knowledge possessed by others within the company.

Furthermore, the petitioner provided no information regarding what type of knowledge or experience is "typical" for a market research professional in the company. While the beneficiary's knowledge may be advanced compared to some workers in the company, it is reasonable to compare him specifically to other workers within his own occupation in evaluating whether his knowledge is truly specialized or whether it can be considered "advanced" compared to the knowledge possessed by other employees of the company. The petitioner offered no evidence or explanation that would differentiate the beneficiary from any other marketing professionals in the foreign entity. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. at 53.

In addition to his claimed advanced knowledge of the foreign entity's products and market research techniques, the petitioner emphasizes that the beneficiary's specialized knowledge includes his knowledge of the management of the foreign entity's departments, the relationships between departments, the culture of the company, "specific working knowledge of the way decisions are made," and "advanced personal knowledge of the key managers in the organization." However, the petitioner once again failed to establish how the beneficiary's knowledge of these intangible factors is advanced compared to other similarly employed workers in the foreign entity. The implication of the argument is that that any similarly-employed worker within the foreign entity's "large complex multinational firm" would be considered by the petitioner to have "specialized knowledge" in that such employees would normally be well-versed in the company's culture, policies, processes and management. However, mere familiarity with an organization's product or service, or, knowledge of the organization's culture, management personnel and internal politics, does not constitute specialized knowledge under section 214(c)(2)(B) of the Act.

The AAO notes that the only supporting documentary evidence submitted in support of the petitioner's claims regarding the beneficiary's specialized knowledge are product brochures and the above-referenced letters from the petitioner and counsel. Despite multiple opportunities, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any documentary evidence that would allow the AAO to evaluate the claim. On appeal, counsel essentially restates the unsupported assertions made in response to the director's request for 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. 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).

Based upon the lack of supporting evidence related to the beneficiary and his employment experience abroad, the AAO cannot conclude that the beneficiary possesses specialized knowledge or has been employed in a position involving specialized knowledge with the foreign entity.

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 parent company. There is no indication that the beneficiary has knowledge that exceeds that of any marketing specialist employed by the foreign entity, or that he has received special training in the company's methodologies or

processes which would separate him from any other persons employed with the petitioner's organization. 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. For this reason, the appeal will be dismissed.

The AAO acknowledges the petitioner's assertion that several individuals have previously obtained L-1B nonimmigrant classification in order to serve in the U.S.-based position of market analyst/special liaison. The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved for the same position. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See 8 C.F.R. § 103.8(d)*. In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See 8 C.F.R. § 103.2(b)(16)(ii)*.

Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See section 291 of the Act, 8 U.S.C. § 1361*. If the previous nonimmigrant petitions filed by the petitioning company were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.