U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAY 04 2005

File: SRC-03-221-50130 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the status of the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of South Carolina that operates a chain of Japanese restaurants. The petitioner claims that it is the subsidiary of Sasaki Sogyo Co., Inc., located in Tokyo, Japan. The petitioner now seeks to employ the beneficiary for an additional three-year period as a Head Chef.

The director denied the petition concluding that the petitioner did not establish that the beneficiary's position in the United States requires 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 petitioner has submitted "vast evidence and supporting documents . . . that overwhelmingly establish the beneficiary's employment as [an] intracompany transferee involving specialized knowledge." Counsel further asserts that the director erroneously relied on the decision of the United States District Court for the District of Columbia in *1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990). In support of these assertions, counsel submits a brief.

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

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

(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 issue in the present matter is whether the petitioner has established that the beneficiary's position in the United States will involve specialized knowledge as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii).

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

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

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

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

With the initial petition filed on August 8, 2003, in an attached letter the petitioner described the beneficiary's job duties as follows:

> [The beneficiary] has been working in our Orlando, FL restaurant since December 2000 as Head Chef. He is responsible for the entire kitchen management including preparation of menus and mixing and preparing the exclusive, secret and proprietary recipes. We use similar recipes in all of our restaurants in Florida, Tennessee, and South Carolina. [The beneficiary], who is one of the handful of our employees experienced in our cooking techniques and advanced level of expertise, brings his unique and specialized knowledge to our restaurant. This not only enhances our competitiveness in the Japanese restaurant business, but also in the dining marketplace due to the unique taste of our cuisine.
>
> [The beneficiary] mastered the secret and exclusive recipes and techniques of cooking used in our restaurant in Japan under our Master Chef, [redacted] These recipes and techniques were perfected over 25 years and are known only to a small number of our chefs, and [the beneficiary's] knowledge surpasses the ordinary or usual knowledge of Japanese chefs. His expertise and specialized knowledge enables us to provide to the American public the exclusive and unique taste and cooking techniques of Japan's cuisine . . . .

> We believe that [the beneficiary] is uniquely qualified and ideally suited for the responsibility of Head Chef in our Orlando, FL restaurant and to train key persons in the secret, exclusive and proprietary recipes and cooking techniques of our operation.

On October 23, 2003, the director requested additional evidence. Specifically, the director requested the following:

> Provide the following evidence and any other documentation that you feel will present an accurate description of the product(s) your company uses.
>
> - Submit evidence relating to the unique methodologies, tools, programs, and/or applications that your company uses. Evidence may include your company's brochure or other literature describing the tools your company uses. Please describe in detail how these are different from the methodologies, tools, programs and/or applications used by other companies.
>
> - Explain, in more detail, exactly what is the equipment, system, product, technique, or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad.
>
> Information about the specific project:
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> Provide the following evidence and any other documentation that you feel will present an accurate description of the specific project to which the beneficiary will be assigned.
>
> - Submit billing records demonstrating the length of time the beneficiary has been working on a specific project abroad.
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> - Submit a letter from the company with whom you have a contractual relationship substantiating the length of time the beneficiary has worked on the project abroad and confirming that this individual will continue to work on the same project in the United States.
>
> - Submit a copy of the contract from the entity with whom the beneficiary will actually be working.
>
> Training records:
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> Provide the following evidence and any other documentation that you feel will present an accurate description of the training required for the position.
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> - Please submit a record – as opposed to merely a letter – from your human resources department detailing the manner in which the beneficiary has gained his/her

specialized knowledge. Documentation should include the pertinent training courses in which the beneficiary has been enrolled while working for your company, as well as the duration of the courses, the number of hours spent taking the courses each day, and the certificates of completion of these courses.

- Indicate the minimum amount of time required to train an employee to fill the proffered position. Specify how many workers are similarly employed by your organization. Of these employees, please indicate how many have received training comparable to the training administered to the beneficiary.

- If the petitioner is seeking to bring the beneficiary to the U.S. to provide training in the area of his or her claimed specialized knowledge, describe in detail the training that the beneficiary will give other workers.

- If the beneficiary will be receiving training upon his or her arrival in the U.S, describe in detail the scope and length of such training.

- Submit the beneficiary's resume.

Organizational charts/payroll records:

Provide the following evidence and any other documentation that you feel will present an accurate description of your organizational structure.

- Submit a copy of the foreign organizational structure, and show the location of the beneficiary's current position in the organization's staffing pattern. Include the levels of supervision and the number and types of positions the alien supervises.

- Submit payroll records substantiating the information contained in these charts.

In a response dated December 30, 2003, the petitioner submitted: (1) a letter from counsel addressing the director's requests; (2) a letter from the foreign entity discussing the beneficiary's employment and training abroad; (3) the beneficiary's resume; (3) organizational charts for the petitioner and foreign entity; (4) a copy of the petitioner's 2002 IRS Form 1120, U.S. Corporation Income Tax Return; (5) copies of the petitioner's state and federal quarterly tax filings; and (6) examples of payroll records. In his letter, counsel states the following:

> [The] Petitioner contends that the beneficiary's knowledge is uniquely different, is uncommon, surpasses the usual knowledge, is critical to the competitiveness of the business, and to the very survival and profitability of its operation. This knowledge of the petitioner's exclusive proprietary recipes and techniques is not merely tended [sic] to enhance the quality of the business operation, but its absence will be a deterrent to function in this job and to

compete in the marketplace. There is no gainsaying the fact that the chef is the heart and soul and the key person in a successful restaurant.

These recipes and techniques are not used by any other employer or chefs except in the petitioner's restaurants in the United States and Japan.

* * *

These recipes do not merely consist of ingredients, tools or equipment, which are common to perhaps all Japanese cooking, but the techniques involved in preparing the entire meal. These techniques have been perfected over 25 years and are constantly updated and improved in order to meet the changing food habits of Americans.

* * *

Our recipes, several of which are unwritten and are disclosed to a handful of select chefs only, who sign a loyalty and secrecy oath, consist of techniques of mixing spices in a certain proportion, heating certain spices to a certain temperature, heating different ingredients for sauces at various temperatures before mixing, observing the color of seafood, determining its tenderness and optimum thickness, chilling different seafood sashimi items at certain temperatures before serving, akin to fine wines, to cite just a few examples.

[The] Beneficiary continues to qualify for the classification of an L-1B . . . because he has previously been found to so qualify for it . . . .

* * *

[The] Petitioner believes that it takes a minimum of five years to learn the Japanese style of cooking including at least a year with the employer to learn the various techniques. The petitioner has been hampered in its availability to train chefs not only because of the problem of lack of availability of basic Japanese chefs here for training, or of retention but also because of the fear of disclosure of its recipes and techniques.

* * *

There are 8 chefs similarly employed by the petitioner in its 5 locations; two each at 3 locations, and one each in Spartanburg and Orlando locations; there are vacancies at each latter location for 1 more chef since each location requires 2 chefs and it is open for business for more than 70 hours per week.

* * *

> As for training records, please . . . note that the beneficiary has already been on the current job for the past three years and training records from the parent company are not available . . . .
>
> Please note that all [head] chefs . . . have obtained training and experience in and have been transferred from the parent company's restaurant in Japan and have received a minimum of one year training in the techniques and recipes used by the organization, after they have had four to five years of experience as chef of Japanese cuisine.

On March 26, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary's position in the United States requires specialized knowledge. Specifically, the director stated the following:

> The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field.
>
> * * *
>
> [T]he beneficiary has gone from a trainer here to build up a skilled labor force for the company to one of eight chefs managing the restaurants' kitchens. There is no evidence that the knowledge necessary to take over that position is different from the knowledge and skills commonly held by others in the culinary filed.
>
> It is clear that any business coming to the U.S. would like to bring along some experienced personnel; however, because of the definition of specialized knowledge, and the restrictive nature of the L program as reaffirmed in [1756], Inc. v. Attorney General, it is obvious that the intention of the L-1B program sets a higher bar than simply the desire for experienced personnel and puts the burden on the petitioner to prove that the employee being petitioned for meets the requirement of having knowledge that is different from that generally found in the industry.

On appeal, counsel asserts that the petitioner has submitted "vast evidence and supporting documents . . . that overwhelmingly establish the beneficiary's employment as [an] intracompany transferee involving specialized knowledge." Counsel submits a lengthy brief discussing the beneficiary's position and the petitioner's need for an employee with specialized knowledge. As this document is part of the record, it will not be repeated in its entirety herein. In the brief, counsel cites numerous matters and a CIS policy memorandum to articulate the current definition of specialized knowledge, including: *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982); *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970); *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971); a CIS field memorandum from [redacted] Associate INS Commissioner, dated December 20, 2002; a CIS field memorandum from [redacted] dated March 9, 1994; and an unpublished AAO decision.

Counsel contends that the beneficiary is a "key person" as he is one of eight head chefs working for the petitioner in the United States. Counsel highlights that the beneficiary is the sole head chef working at the

petitioner's Orlando location. Counsel states that "[t]he beneficiary is essential to the business operation as he is the only one with knowledge of [the] petitioner's recipes and techniques developed by the parent company in Japan." Counsel provides that "[t]he entire operation of the petitioner rests upon the proprietary knowledge of its parent's recipes and techniques which were transferred to its restaurants in the United States, and which distinguish it from other so called Japanese cuisine restaurants." Counsel asserts that:

> The knowledge [held by the beneficiary] of these recipes and techniques is known only to a handful of select chefs, and not all chefs are privy to all recipes and techniques. For example, the sushi chef may not know the recipes of soups, sauces and desserts and the other chef may not know the recipes of sushi and sashimi items. The authentic Japanese style cooking is quite complex, because not only does the chef have to know the recipes quantitatively, but he has to have the knowledge and skill to evaluate the cooking qualitatively by his experienced, discerning eye as to the color, doneness and temperature.

Counsel further asserts that the director erroneously relied on the decision of the United States District Court for the District of Columbia in *1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990), as the cited matter involves a specialty chef and not a head chef with specialized knowledge.

Counsel submitted an additional letter, dated September 20, 2004, in which he cites a CIS interoffice memorandum from William R. Yates, Associate Director of Operations, of April 23, 2004. Counsel asserts the following:

> The Service (BCIS) violated its own Policy in matters of extensions, in that ". . . . a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification should be given deference." There was absolutely no change in circumstances [since the] prior approved petition. Therefore, the petition should have been approved.

On review, counsel has not demonstrated that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).[1] As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52

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[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 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]

(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.

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 that employee and the remainder of the petitioner's workforce.

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

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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.

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 that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also*, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In the instant matter, the petitioner has not submitted sufficient documentation to show that the beneficiary's duties involve specialized knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D). While the record suggests that the beneficiary is an experienced chef, evidence does not show that his responsibilities require a greater level of knowledge and ability than that possessed by a skilled chef in the culinary field.

The petitioner references its "exclusive, secret and proprietary recipes" and states that some of its sauces are blended in unique proportions, yet the petitioner has failed to provide sufficient independent evidence that its recipes differ from those used by other restaurants. The petitioner's documentation in this regard is limited to general statements from the petitioner and counsel that the beneficiary has learned "techniques of mixing spices in a certain proportion, heating certain spices to a certain temperature, heating different ingredients for sauces at various temperatures before mixing, observing the color of seafood, determining its tenderness and optimum thickness, [and] chilling different seafood sashimi items at certain temperatures before serving . . . ." As stated, this list of skills could be attributed to any Japanese chef working in the restaurant business. The petitioner submitted a copy of a menu for its restaurant in Orlando, yet this menu provides no indication that the restaurant offers food that is prepared using recipes and methods that are specific to the petitioner's family of restaurants. Counsel and the petitioner have failed to adequately articulate and document how the beneficiary's particular knowledge is specific to the petitioner's internal methods and operations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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). Conclusory statements that the beneficiary possesses specialized knowledge will not satisfy the petitioner's burden of proof.

In response to the director's request for evidence, counsel stated that chefs, such as the beneficiary, who have received training in the petitioner's proprietary methods and recipes "sign a loyalty and secrecy oath."

However, despite the director's request for evidence that reflects the proprietary nature of the beneficiary's knowledge, the petitioner has not provided a copy of this oath. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner stated that "[the beneficiary] mastered the secret and exclusive recipes and techniques of cooking used in our restaurant in Japan under our Master Chef, [redacted] Yet, the petitioner has provided no documentation of the beneficiary's training, and no information regarding the manner of his study under the petitioner's Master Chef beyond the fact that it took one year. The director further requested evidence of the beneficiary's training and the beneficiary's resume. The beneficiary's resume provides no information regarding any training he received from the petitioner or parent company abroad. Thus, the petitioner has failed to submit sufficient independent documentation to corroborate it statements regarding the beneficiary's one year of training. Once 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.

Thus, contrary to counsel's assertion, the record does not contain "vast evidence and supporting documents" to establish the petitioner's eligibility, and the director's decision does not suggest that she failed to consider the materials submitted in support of the petition.

Counsel further asserts that the director erroneously relied on the decision in *1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990), as the cited matter involves a specialty chef and not a head chef with specialized knowledge. However, the director's decision reflects that the director correctly considered the cited matter for the general guidance it provides regarding eligibility for L-1B status. The director did not claim that the decision in *1756, Inc. v. Attorney General* particularly excludes specialty or head chefs from L-1B classification.

In his appellate brief, counsel cites an unpublished AAO decision. The AAO notes that, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel asserts that the director improperly denied the petition, in that the decision was contrary to the April 23, 2004 CIS interoffice memorandum from William R. Yates. Counsel claims that, as CIS previously approved a petition for L-1B status on behalf of the beneficiary based on the same facts, CIS is now precluded from denying the present petition for an extension. Yet, prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The director's decision in the present matter does not indicate whether she reviewed the prior approval of the previous nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same documentation and alleged specialized knowledge provided in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or

any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). It is further noted that the director's decision was issued on March 26, 2004, while the memorandum from William R. Yates was circulated approximately one month later on April 23, 2004. Thus, the memorandum does not serve as evidence of binding CIS policy at the time the director issued her decision.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, *supra* at 16. The petitioner has failed to submit sufficient documentation to show that the beneficiary will be employed in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.