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U.S. Citizenship and Immigration Services

D7

[redacted]

File: LIN-04-127-53170 Office: NEBRASKA SERVICE CENTER Date: JUN 29 2005

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, Nebraska 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 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 Delaware that provides software development and consulting services. The petitioner claims that it is the subsidiary of [redacted] located in Pune, India. The petitioner now seeks to employ the beneficiary for three years as a Design Engineer.

The director denied the petition concluding that the petitioner failed to show that the beneficiary was employed abroad in a capacity that required specialized knowledge, and that the prospective position in the United States 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 beneficiary qualifies for L-1B status, and that the director failed to offer substantive evidence to support the denial. 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 first issue in the present matter is whether the petitioner has established that the beneficiary was employed abroad in a capacity that required specialized knowledge. *See* 8 C.F.R. §§ 214.2(l)(3)(iv).

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.

In a letter submitted with the initial petition on March 30, 2004, the petitioner described the beneficiary's past experience with the foreign entity as follows:

> [The beneficiary] possesses advanced knowledge of reverse Engineering projects using scan data as input and carrying ou[redacted] in Pro/Engineer that is useful for CAD Design areas. He also has advanced expertise in designing Injection Moulded [sic] Plastic components, due to his level of expertise with the materials and process.
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> * * *
>
> [The beneficiary's] significant experience with the parent company . . . performing design-engineering duties for [the foreign entity's] products gives him the concentrated expertise and advanced level of knowledge of the product, engineering specifications and other technological requirements necessary to perform the proposed duties.
>
> * * *
>
> [The beneficiary] joined [the foreign entity] in July 2002 and worked for [the foreign entity] performing the responsibilities of an Assistant Manager (CAD) until present . . . . Specifically, [the beneficiary] performed system design and modeling using tools such as Pro/Engineer (2000i & 2000i2). He trained customers in the use of the above-mentioned software packages, conducted customer-specific system benchmarking, and provided expert consulting services regarding the use and optimization of the noted software packages. He is

also proficient in many of the prevalent software technologies and projects, particularly high-end software tools and modules.

On March 31, 2004, the director requested additional evidence as follows:

> **Submit evidence that the beneficiary possesses special knowledge of your 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. Although the beneficiary may possess an advanced knowledge of the processes and procedures of the company, evidence must be submitted to describe and distinguish that knowledge from the knowledge possessed by others within the organization, and the industry at large. In addition, the evidence must establish that the beneficiary's duties abroad for the qualifying employment abroad involved, and the duties in the United States, require a person with specialized knowledge.**
>
> 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 documentation which supports that claim, i.e., diplomas, course completion certificates, etc. The documentation that you provide must identify the school and the beneficiary 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 experience differ from the training and experience an individual would receive who is similarly engaged within the same firm or industry.

(Emphasis in original).

In a response dated April 27, 2004, the petitioner submitted a statement addressing the director's concerns. As this statement is part of the record of proceeding, it will not be repeated entirely herein. However, in part the petitioner stated the following:

> [The beneficiary], in his capacity as a team member, has performed responsible functions on the basis of his advanced knowledge and expertise that has enabled [the foreign entity] to deliver various projects to international customers.
>
> The 1st level of knowledge while handling such projects pertains to usage of the software and performing the function by operating the commands as directed by the supervisor. Second is the ability to design the component with engineering basics. The third basic level of knowledge is an ability to identify individual components of integration that will interface abilities of each module.

* * *

[The beneficiary] has an ability to understand software tools, their applications, and the deployment of tools for design processes and create the interfaces with an integrated approach. One more important aspect is to employ the various disciplines of knowledge in a structured manner by extracting the work from engineers who are performing individual operations. [The beneficiary] has supervised and delivered many such projects which involved [the] following aspects:

- Application software.
- Tooling design and manufacturing
- Data conversions
- Systems integration
- Defining data management
- Manage heterogeneous operating systems
- Concurrent engineering

It is very clear from the items listed above that he possesses multi-skills and advanced and specialized knowledge to integrate everything together to successfully deliver needs of the customers.

* * *

[The beneficiary's] advanced and specialized knowledge and expertise gained through working at [the foreign entity] consists of [the] following factors:

- Pro/Engineer 2001 3D models & 2D drawings making systems as used in [the foreign entity] and as will continue to be used in his duties at [the petitioner]

- [The petitioner's] CAD drawings checklists.... these are unique to [the foreign entity] and [the beneficiary] has undergone several weeks of training and knows how to use these lists for specialized services to [the petitioner]

The petitioner submitted a resume for the beneficiary that reflects that he served as a team member on numerous projects, and his duties with the foreign entity included providing "[a]ssistance to the Project Leader in planning the inputs and deliveries for [the] execution of projects."

On May 7, 2004, the director denied the petition. The director determined that the petitioner failed to show that the beneficiary was employed abroad in a capacity that required specialized knowledge. Specifically, the director stated that, while the beneficiary's responsibilities require experience with Pro/Engineer, this skill is not out of the ordinary for other professional engineers in the beneficiary's field. The director stated that "the

petitioner is simply one of many firms using Pro/Engineer and other professional engineering tools." The director stated that "it is presumed that most consulting firms have their own methodology in how to conduct a consulting engagement," thus calling into question whether the foreign entity's and petitioner's methodology can be considered different or uncommon.

On appeal, counsel for the petitioner asserts that the beneficiary qualifies for L-1B status, and that the director failed to offer substantive evidence to support the denial. In an attached brief, counsel states the following:

> [T]he petitioner has never suggested that the tools being used by [the beneficiary] are unique to the petitioner. Petitioner has always stressed that [the beneficiary] possesses advanced knowledge of petitioner's design engineering standards and possesses expertise in applying those standards using specialized software (Pro/Engineer, etc.), applications and methodologies.

Counsel references previously provided letters and asserts that sufficient evidence has been submitted to establish that the beneficiary qualifies for L-1B classification. Counsel states that "[o]ther than simply disagreeing with petitioner's and counsel's statements, [Citizenship and Immigration Services (CIS)] offers no substantive evidence in opposition to [the beneficiary's] eligibility for L-1B classification." Counsel asserts that "[a]t the very least, petitioner deserves an explanation as to why this case does not fit precisely within the *Puleo* and *O'hata* memos." Counsel futher states the following:

> [CIS] has explicitly acknowledged petitioner's "own methodology". By stating as much, [CIS] has conceded that the instant case falls precisely within point #5 of the *Puleo Memo* and also fits precisely into the example used in the Puleo Memo. This alone qualifies [the beneficiary] for L-1B classification.

Upon review, the petitioner has not demonstrated that the beneficiary was employed abroad in a specialized knowledge capacity. *See* section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B); 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining whether the beneficiary was employed abroad in a specialized knowledge capacity, the AAO will look to the petitioner's description of the foreign job duties. *See* 8 C.F.R. 214.2(l)(3)(iv). The petitioner must submit a detailed description of the services 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

[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]

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.

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*

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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.

of Penner, *id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that 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 provides explanation of the beneficiary's technical skills and knowledge used with the foreign entity, including substantial experience with engineering software such as Pro/Engineer. However, as pointed out by the director and confirmed by counsel on appeal, Pro/Engineer is not a proprietary product exclusive to the foreign entity or the petitioner. Pro/Engineer is a suite of design programs developed by a separate company, and it is available to anyone working within the beneficiary's field. Thus, knowledge and experience with Pro/Engineer does not constitute specialized knowledge of the petitioner's or foreign entity's products or processes. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner has not named any other design tools or software packages with which the beneficiary has significant expertise.

The petitioner stated that, in addition to experience with Pro/Engineer, the beneficiary's "advanced and specialized knowledge and expertise gained through working at [the foreign entity] consists of . . . [the petitioner's] CAD drawings checklist." The petitioner indicated that the checklists are "unique to [the foreign entity] and [the beneficiary] has undergone several weeks of training and knows how to use these lists for specialized services to [the petitioner.]" However, the petitioner has failed to clearly describe what the checklists are, for what purpose they are used, or how they differentiate the foreign entity's methods from those used by other companies. 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)).

In the request for evidence, the director instructed the petitioner to provide documentation of training the beneficiary received, including "any company-specific vocational, technical and/or professional development courses which are related to the company's equipment, products, processes and/or procedures." While the petitioner claims that the beneficiary completed "several weeks of training" regarding the foreign entity's checklists, it did not submit documentation to support this assertion. Nor did the petitioner explain whether such documentation is available, or the reason for such omission. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought

has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Counsel claims that the director did not "explain what substantive evidence would have convinced [CIS] of [the beneficiary's] eligibility as an L-1B intra-company transferee." Yet, the director gave clear guidance as to what detailed explanation was required. The director specifically instructed the petitioner to provide documentation of the beneficiary's training, yet the petitioner failed to submit such evidence. Counsel's assertion is not persuasive.

Counsel asserts that "[the beneficiary] possesses advanced knowledge of [the] petitioner's design engineering standards and possesses expertise in applying those standards using specialized software (Pro/Engineer, etc.), applications and methodologies." However, the petitioner has failed to clearly describe its or the foreign entity's particular methods, standards, or procedures, such to establish that they are different from those used by other consulting firms. The petitioner discusses the beneficiary's tasks abroad, including performing system design and training customers in non-proprietary software, yet the petitioner has not shown that the beneficiary's methods for completing his duties differed from any consultant performing similar work for other companies. It is not sufficient to merely state that "[the beneficiary's] responsibilities require in-depth and extensive knowledge of [the foreign entity's] engineering products and systems development services." As requested by the director, the petitioner must provide adequate detail and documentation to establish that the beneficiary's knowledge is different from that commonly held in his field. 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.

Counsel references the director's statement that "most consulting firms have their own methodology in how to conduct a consulting engagement." Counsel asserts that "[CIS] has explicitly acknowledged [the] petitioner's 'own methodology.'" Yet, counsel misconstrues the context of the director's comment. The director referenced the fact that most consulting companies have internal methods and procedures to illustrate that the petitioner's broad assertions do not meet its burden to distinguish the beneficiary's knowledge from that held by consultants with other firms. It is inaccurate to assume that any consultant working with any firm possesses specialized knowledge simply by working for the company. The L-1B program was not intended to encompass such a broad class of workers. *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The petitioner must submit sufficiently detailed evidence to establish that the foreign entity's methods and procedures, and the beneficiary's use thereof, are specific to it and the foreign entity. The petitioner has failed to meet this burden.

Counsel asserts that the beneficiary satisfies the requirements of specialized knowledge as discussed in an internal Immigration and Naturalization Service memorandum from James A. Puleo. *See* Memorandum From James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (Mar. 9, 1994). Counsel claims that the beneficiary meets one of several named criteria for establishing specialized knowledge, and that the beneficiary's foreign duties fall directly within one of the examples of specialized knowledge provided in the memorandum. Specifically, counsel asserts that the petitioner has shown that the beneficiary possesses knowledge of a product or process which cannot be easily transferred or taught to another individual. Yet, as discussed above, the petitioner has failed to sufficiently describe the foreign entity's methods and procedures, and it does not claim that the foreign entity offers any products that are specific to its company. Counsel claims that the beneficiary satisfies an example provided in the memorandum which notes that "the United States firm

would experience a significant interruption of business in order to train a United States worker to assume [the beneficiary's] duties." As the petitioner has failed to distinguish the beneficiary's knowledge and experience from that held outside of the foreign entity or petitioner, it has not shown that it would incur any interruption of business if not permitted to employ the beneficiary in L-1B status.

Counsel further asserts that the petitioner is only required to meet one of the criteria listed in the *Puleo* memo in order to establish that the beneficiary possesses specialized knowledge. However, the memorandum prefaces the list of criteria by stating that "[t]he following are some of the possible characteristics of an alien who possesses specialized knowledge. They are not at all inclusive." Thus, the criteria are intended as general guidance for CIS personnel, and not definitive legal requirements. Counsel's assertion that meeting one criterion "alone qualifies [the beneficiary] for L-1B classification" is not persuasive. For example, the first criterion in the list states that a beneficiary "[p]ossesses knowledge that is valuable to the employer's competitiveness in the market place." Most employees that have worked for a company for a year or more meet this criterion. Clearly more is required than satisfying a single criterion named in the *Puleo* memorandum.

Further, the petitioner failed to distinguish the beneficiary's knowledge from that generally held among the foreign entity's employees, such to establish that the beneficiary qualifies as key personnel. *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). The petitioner has not explained whether the beneficiary has received training or experience that is different from other consultants working for the foreign entity. In fact, the beneficiary's resume states that his duties with the foreign entity include providing "[a]ssistance to the Project Leader in planning the inputs and deliveries for execution of projects." The resume lists 11 projects the beneficiary worked on, and in each it specifies that he was a "Team Member" on teams ranging from one to five employees. Thus, the beneficiary's resume reflects that he has not served in a lead role with the foreign entity, which undermines a finding that he is distinguished among the foreign entity's employees.

Counsel states that the director "offers no substantive evidence in opposition to [the beneficiary's] eligibility for L-1B classification." However, 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. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 103.3(a)(1)(i). In this case, the director has discussed the deficiencies in the petitioner's evidence and adequately explained how he arrived at his decision to deny the petition. Counsel's argument is not persuasive.

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 demonstrated that the beneficiary should be considered a member of a "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, *supra* at 16. Based on the foregoing, the AAO concludes that the petitioner has not established that the beneficiary was employed abroad in a capacity that involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iv). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the prospective position in the United States requires an individual with specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In a letter submitted with the initial petition, the petitioner described the beneficiary's prospective duties as follows:

> In this position, [the beneficiary] will perform extremely complex engineering duties to design, develop, integrate and set-up network systems and applications using [the petitioner's] systems integration approach. As a member of [the petitioner's] Engineering Team, [the beneficiary] will make technical contributions, including recommendations for improving current projects and enhancing the software development lifecycle.
>
> He will analyze product requirements and product architectures and produce network designs and implementation that will enable our clients to maintain state-of-the-art product offerings and technology. He will use Pro/Engineer (2000i & 2000i2) software and simulations for assignments and also use other leading edge software tools. He will be responsible for application customization, re-creation and transfer of data, finite element analysis, and system design and modeling. [The beneficiary] will evaluate user requests for new or modified systems to determine feasibility, cost and time required, compatibility with current system and computer capabilities. He will consult with users to identify current operating procedures and clarify program objectives and will formulate plans outlining the steps required to develop the program, using product knowledge and design. [The beneficiary] will also be required to provide technical training regarding the programs he develops and monitor post-implementation performance.
>
> [The beneficiary] possesses an advanced level of knowledge of [the petitioner's] methodologies, applications and software packages and will continue to apply his knowledge during his assignment in the United States. [The beneficiary] will continue to perform engineering and design duties using high-end software applications. [The beneficiary's] advanced level of knowledge involves the application and deployment of the engineering tools and their integration towards the successful completion of the assigned project. [The beneficiary] will be using [the petitioner's] systems integration approach in all aspects of his duties. In performing his duties, [the beneficiary] will combine the knowledge of mechanical engineering, add-on programs and customization of software using [the petitioner's] methodologies and training. He has acquitted [sic] a unique blend of Pro/Engineer software expertise combined with design/modeling standards in surface modeling.
>
> As noted, the position requires a thorough knowledge of the specifications and technical requirements, which have been developed at our Indian office.

In response to the director's request for evidence, the petitioner further described the beneficiary's prospective duties in the United States as follows:

> [The petitioner] uses the specialized software **Pro/Engineer 2001 Solid; Surface modeling, Sheet metal, advanced assembly, Piping & Cabling modules**.
>
> * * *
>
> [The beneficiary] has worked on projects for clients (including [redacted] from the United States, Germany, and India. Some of these projects include: Product design support of Plastic parts, castings, sheet metal parts, Piping layout design, Reverse engineering of plastic parts in the area of Cab design of tractor. [The beneficiary] will continue to perform similar engineering and design duties using high-end software application packages, in particular Pro/Engineer 2001, for our clients in the United States.
>
> [The beneficiary's] advanced level of knowledge with [the petitioner's] design engineering standards and his expertise in applying those standards using specialized software, applications, methodologies and training sets his knowledge apart and makes him uniquely qualified to continue these services for our clients in the United States.

(Emphasis in original).

In denying the petition, the director concluded that the petitioner failed to show that the prospective position in the United States requires an individual with specialized knowledge. The director stated that "the petitioner is simply one of many firms using Pro/Engineer and other professional engineering software tools."

On appeal, counsel's brief is framed as a simultaneous response to both grounds for denial. Thus, counsel's arguments discussed above also apply to whether the beneficiary will be employed in the United States in a capacity involving specialized knowledge.

As with the beneficiary's duties abroad, the petitioner has not indicated that the beneficiary will utilize software or products in the United States that are specific to the petitioner's family of companies. Thus, the petitioner's primary representation is that the beneficiary possesses specialized knowledge due to having "advanced knowledge of [the] petitioner's design engineering standards and . . . expertise in applying those standards . . . ." However, as discussed above, the petitioner has failed to adequately describe the standards used by it and the foreign entity, such to establish that knowledge of them constitutes specialized knowledge. The evidence of record does not support that the petitioner requires an employee with greater knowledge than a skilled worker in the beneficiary's field. Thus, the petitioner has failed to show that the prospective position in the United States requires an individual with specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). For this additional reason, the appeal will be dismissed.

It is noted that the director stated that the petitioner's petition for L-1B status on behalf of the beneficiary appears to be an attempt to circumvent numerical limits on approvals of petitions for H-1B status, as H-1B is the appropriate classification for the beneficiary. Counsel asserts that the beneficiary is eligible for L-1B status, and that the director's comment regarding the petitioner's alleged attempt to circumvent the H-1B cap is "not related to the merits of this case." The director should focus on applying the statute and regulations to

the facts presented by the record of proceeding. The director's comment regarding the H-1B cap constitutes the director's personal impression that has no material bearing on the present matter. Accordingly, the director's comment in this regard will be withdrawn.

In visa 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 appeal will be dismissed.

ORDER: The appeal is dismissed.