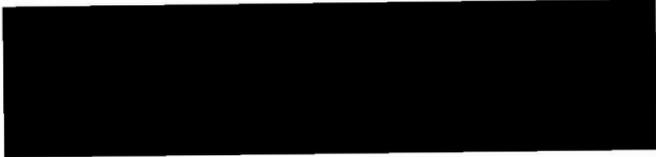




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Services

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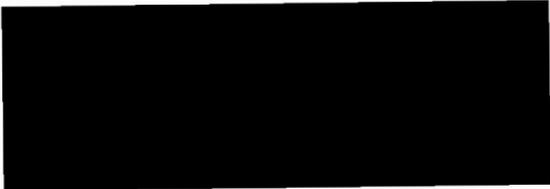
File: WAC 04 135 53909 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2006

IN RE: Petitioner:  
Beneficiary:



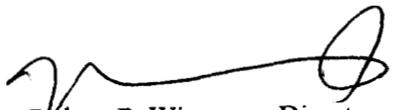
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The 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 § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California corporation that claims to be engaged in reproduction of fine art pieces. It exports printing equipment and supplies to Japan and imports art paper. The petitioner claims to be a subsidiary of [REDACTED], located in Tokyo, Japan. The petitioner seeks to employ the beneficiary as its president for a three-year period.<sup>1</sup>

The director denied the petition concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he would be employed in a position requiring specialized knowledge in the United States.

The petitioner initially filed an appeal on June 28, 2004. On July 22, 2004, the director rejected the appeal as improperly filed pursuant to 8 C.F.R. §§ 103.3(a)(2)(v)(A)(1) and (2). The petitioner subsequently filed a motion to reconsider the rejected appeal on August 9, 2004, noting that the record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the affected party and was therefore improperly rejected. The director granted the petitioner's motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision was arbitrary and capricious because it "failed to provide a rational connection between the facts and the choice made in formulating its conclusions, ignored relevant evidence, relied on irrelevant factors in formulating its conclusions, and was inconsistent with established USCIS policies and precedent." Counsel submits a brief in support of the appeal.

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

The regulation at 8 C.F.R. § 214.2(l)(3) 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.

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<sup>1</sup> The beneficiary was previously granted L-1A classification to work for the petitioner from October 19, 2001 through October 19, 2003 (WAC 01 167 51466). The Director, California Service Center, denied the petitioner's request to extend the beneficiary's L-1A status (WAC 04 012 51255) and a subsequently filed I-129 petition requesting new L-1A employment (WAC 04 117 50216).

- (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 April 13, 2004. In an appended letter dated April 1, 2004, the petitioner asserted that the beneficiary would perform the following duties as the petitioner's president:

[The beneficiary] will continue to direct the overall business activities of our company including overseeing our administration, marketing and customer service functions. He remains responsible for the establishment and implementation of all policies and goals of our company's business. He will continue to examine and review new market expansion opportunities, and develop present and future business plans in the United States. He will also review and analyze new customer needs and business trends in the United States based on his knowledge of the art industry and artistic aesthetics, as well as our parent company's proprietary industry contacts and business relationships. He will be expected to direct our current staff, and recruit and hire additional operational staff as necessary to perform the daily functions of the business. [The beneficiary] will exercise wide discretionary authority in

negotiating the terms and conditions of our contractual agreements as well as the pricing of our products, taking into consideration market trends and the profit margins [the beneficiary] will establish. [The beneficiary] will also develop our business' sales and marketing strategies by evaluating various promotional activities and opportunities. In addition to establishing the foundations for our company's current business, he will analyze the U.S. market, examine the preferences of our existing as well as potential customers, and establish medium and longer-term business plans for our company's growth and expansion into other business opportunities in the United States.

The petitioner explained that the U.S. company's business model is "based on the diversified international trade of specialty art paper and printing equipment and supplies between the United States and Japan." Specifically, the petitioner indicated that it exports large format printers and solvent inkjet media, used for the manufacture of commercial and industrial signs, to Japan, and imports "Okamoto Washi" decorative paper to the United States for sale to the wholesale arts and crafts market.

The petitioner noted that the beneficiary received a bachelor's degree in fine arts and has two years of experience with the petitioner's Japanese parent company, where he served as manager of the digital department with responsibility for directing the setup and editing of digital images used in reproducing fine art pieces. The petitioner further explained the beneficiary's qualifications as follows:

[The beneficiary] is highly qualified for the offered position due to his specialized and proprietary knowledge of our corporate organization, business policies and goals, trade markets and procedures, and art and printing products. He was solely responsible for the establishment of our business in the United States, including all business policies and procedures, and was principally responsible for the negotiation and acquisition of our current business agreements and trade activities. . . .

[The beneficiary] gained invaluable managerial experience and specialized knowledge of our parent company's proprietary printing methods, business policies and industry contacts during his employment with [the foreign entity]. He has parlayed this specialized knowledge as our President in establishing our company in the United States and successfully establishing international trade activities. In addition, [the beneficiary's] bilingual Japanese and English abilities, and knowledge of the societal and cultural differences between the two countries were instrumental in his success in negotiating supply and distribution agreements in the United States and Japan. . . .

In support of the petition, the petitioner submitted a product brochure for the "Jeti 3.3 Digital Printer," which according to the brochure is developed and manufactured by Gandi Innovations and is marketed and serviced by Superwide Connection of San Antonio, Texas.

On April 24, 2004, the director issued a notice of intent to deny, observing that while the petitioner described the beneficiary's duties and work experience, it provided no clarification as to how and why the beneficiary's experience and prospective duties qualify as specialized knowledge. The director referenced the regulatory

definition of specialized knowledge, as well as a 1994 legacy Immigration and Naturalization Service (INS) memorandum, noting that INS, now Citizenship and Immigration Services (CIS) has long relied on interpretations of specialized knowledge found in the memorandum. See Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Special Knowledge*, CO 214L-P (March 9, 1994) (“Puleo memorandum”).

The director instructed the petitioner as follows:

The petitioner must provide evidence that the beneficiary’s knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The evidence must also establish that the beneficiary’s knowledge of the processes and procedures of the company is apart from the elementary or basic knowledge possessed by others.

Additionally, the petitioner must provide evidence demonstrating that the beneficiary’s training, experience and recognized expertise is critical to the petitioner’s proprietary interests, and evidence to substantiate the exclusivity to the petitioner’s methodologies, tools, programs, and techniques used in managing a business that is different from other similar organization.

In a rebuttal dated May 20, 2004, counsel for the petitioner stated that, contrary to the director’s observations, the petitioner “has explained the specialized nature of the Beneficiary’s knowledge, and on its face, the Beneficiary meets the qualifications of possessing specialized knowledge.” Counsel stated that the Puleo memorandum supports the petitioner’s contention that the beneficiary possesses specialized knowledge, and referred to several examples found in the memorandum. First, counsel claimed that the beneficiary’s knowledge is different from that generally found in the industry, noting that the petitioner’s products are varied and “range from decorative art paper to industrial wide format printing machines.” Counsel asserted that it is uncommon for an individual to possess the combined knowledge of these products and “even more unlikely for a particular individual with such combined knowledge to have the necessary language and cultural knowledge to conduct international trade between the United States and Japan.” Counsel emphasizes that as the petitioner’s president, the beneficiary gained his knowledge by identifying and negotiating with suppliers and customers in both the United States and Japan.

Second, counsel argued that the knowledge possessed by the beneficiary regarding the petitioner’s business management “is proprietary insofar as no one else is privy to this knowledge.” Counsel emphasized that the beneficiary is essential to the continuing survival of the company “as he alone possesses the knowledge required to direct and guide the development of the company . . . . The special knowledge the beneficiary possesses regarding the company’s policies, procedures and goals is advanced because the Beneficiary was principally responsible for developing them and is still currently responsible for them.” Counsel noted that the beneficiary’s “high-level” position is evidenced by his previously accorded L-1A status and states that he is clearly “key and essential,” particularly in light of the fact that the petitioner employs only one other employee.

Third, again referring to the Puleo memorandum, counsel argued that the beneficiary's knowledge would be difficult to impart to another individual without significant economic inconvenience to the U.S. or foreign firm. Counsel stated that the company "would most certainly fail as there is no other staff capable of maintaining and performing all the operations and activities of the business."

Finally, counsel further explained the beneficiary's claimed specialized knowledge as follows:

[A]lthough it was argued above that even if the Beneficiary's knowledge regarding he Petitioner's products was general in nature, the combination of the Beneficiary's product knowledge and knowledge of the company's procedures and policies would be considered specialized knowledge. However, in actuality, the Beneficiary's product knowledge is not merely general in nature, but is highly specialized. The first example involves the Jeti 3300 wide format printer manufactured by Gandinnovations and distributed by the Petitioner in Japan. Due to the Beneficiary's bilingual language abilities, and printing knowledge based on his experience with the Petitioner's Japanese parent company, the Beneficiary was instrumental in assisting the manufacturer in modifying the machine to print on mesh substrate materials, a popular material used in Japan but not in the United States. Currently, all the Jeti 3300 machines that have been distributed in Japan, which now number a total of seven, are equipped with this modification, thanks to the negotiations of the Beneficiary with the manufacturer in convincing them that this modification, although not without additional expense, would make the product more marketable in the Japanese market.

A second example is in regards to the sales of decorative art paper. Through research conducted by the Beneficiary, it was discovered that sales of Okamoto Washi decorative art paper was [sic] hindered due to the high cost of the paper and their generic designs and patterns, and limited sizes. Using his expertise regarding color and aesthetics attained in his specialized Bachelor's degree in Fine Arts . . . as well as his cultural and language knowledge of Japan, the Beneficiary was able to negotiate with the Japanese paper manufacturer to offer customized patterns specified by customers. . . . Due to his silk screening knowledge attained during his employment with [the foreign entity], the Beneficiary suggested that the Yuzen silk screening technique be utilized. Unfortunately, this technique did not work well with the normal paper stock used by Okamoto, so through the Beneficiary's negotiation abilities, he convinced the United States customer to accept a heavier paper stock. . . .

The final example relates to the Beneficiary's language and cultural knowledge of the United States and Japan. The Beneficiary has been responsible for the translation and preparation of user manuals, training tutorials, and informational materials for the products the Petitioner distributes in the United States and Japan. Since much of the terminologies used in such documents are highly specialized or technical in nature, involving art concepts and art software, the Beneficiary's art and printing knowledge has proven essential in developing such materials.

The petitioner's response to the notice of intent to deny also included a May 17, 2004 letter from the petitioner's other employee, who stated that his duties are significantly different from those performed by the beneficiary, and confirmed that he has "insufficient knowledge to perform both positions alone." Specifically, with respect to the beneficiary's duties and specialized knowledge, the petitioner stated:

[The beneficiary] has an intimate knowledge of our corporation and business, and is solely responsible for developing our business plan and policies based on his knowledge of our organization's overall business objectives. [The beneficiary's knowledge of our varied products, which range from washi decorative art paper all the way to industrial wide format printers and milling machines; and his knowledge of Japanese markets, attitudes and culture, are essential to his ability to successfully negotiate agreements and prices with our Japanese customers. Based on this knowledge, he is able to negotiate with North American manufacturers to ensure acceptable profit margins he formulates. [The beneficiary] is also responsible for deciding which product we will be exporting to Japan, as well as the products that our company imports into the United States. Finally, [the beneficiary] is a critical liaison between our business partners in the United States and Japan by ensuring the proper bilateral flow of information, including translating necessary technical product and business information for our customers and suppliers.

\* \* \*

[The beneficiary] possesses a unique combination of knowledge that is essential to the survival of our company and not readily available among others in the art supply business in the United States. . . .

Finally, the petitioner submitted a May 11, 2004 letter from the foreign entity, confirming that the beneficiary is "solely responsible for maintaining [the petitioner's] business and is solely knowledgeable regarding the products and agreements negotiated with suppliers and distributors." The foreign entity's chairman expressed the company's intent to close down the U.S. subsidiary in the event that the beneficiary is unable to remain in the United States.

The director denied the petition on June 4, 2004, concluding that the petitioner had not established that the beneficiary possesses specialized knowledge, or that the offered position requires an individual with specialized knowledge. The director noted the petitioner's emphasis on the beneficiary's knowledge of the Japanese language and culture, his ability to negotiate with manufacturers and customers, and his "proprietary" knowledge of the policies and procedures he developed for the petitioner's new office, and found that none of these characteristics constitute "specialized knowledge" for the purposes of this nonimmigrant visa classification. The director also observed that the record contains no comprehensive description of the beneficiary's duties which would indicate that the duties are "so out of the ordinary" that they would require specialized knowledge. The director concluded that the record is not persuasive in establishing that "the beneficiary's familiarity with the company's operating standards and policies [is] so distinctive and uncommon that it can only be achieved by someone possessing an advanced level of knowledge of the processes and procedures of the petitioning organization."

In an appeal filed on June 28, 2004, counsel for the petitioner asserts that the director's decision "is comprised of conclusions reached by the director, which the Petitioner will show are arbitrary, capricious and an abuse of discretion." Counsel discusses and attempts to rebut each conclusion reached by the director. As counsel's brief is part of the record, it will not be repeated in its entirety here. Counsel objects to the director's determination that the petitioner failed to compare the petitioner's business to other businesses selling similar products. Counsel states that the petitioner must establish that the beneficiary possesses knowledge that is different from that generally found in the particular industry, and argues that the petitioner sells an unusual combination of products and is unaware of other businesses that deals with the same products in both the United States and Japan. Counsel again emphasizes that the Puleo memorandum "clearly contemplates the situation where specific knowledge by itself may only be general in nature, but in combination, is sufficient to be specialized knowledge," and asserts that the director's "failure to follow the USCIS' own stated policies is an abuse of discretion."

Counsel further contends that the petitioner never stated that the beneficiary's knowledge of the Japanese language and culture alone would qualify as specialized knowledge. Rather, counsel states that this knowledge, "when combined with knowledge of the varied products marketed by the Petitioner, is sufficient to meet the specialized knowledge standard in that such combined knowledge is reasonably required in order to perform the Beneficiary's duties, and is generally not known in the particular industry." Counsel contends that the director failed to consider all relevant evidence in light of the totality of the circumstances, or in light of the Puleo memorandum.

Counsel objects to the director's conclusion that, based on the petitioner's representations regarding the proprietary knowledge gained by the beneficiary in creating and developing the U.S. company since its inception, any manager or executive admitted to open a new office would qualify as a specialized knowledge employee by virtue of "having knowledge of opening the new office." Specifically, counsel states:

Contrary to the Director's conclusion, the Petitioner has not claimed that simply opening a new office under a approved L-1A petition qualifies the Beneficiary as having specialized knowledge. In fact, the Petitioner's response to the NOID clearly states that, "[a]lthough it is not argued that all executives and managers of all company's [sic] qualify as possessing specialized knowledge, the Beneficiary does so because of his key and essential position in the company, especially given there are only two employees, and the fact that he was responsible for the creation and development of the company since inception." It is the advanced level of knowledge possessed by the Beneficiary that makes the knowledge possessed specialized. The Beneficiary has not just simply opened a new office, but rather diversified the Petitioner's business away from its original purpose, and negotiated and conducted business with trading partners that has resulted in significant increases in gross revenues and profits for the petitioner. As such, the Director's failure to examine all relevant facts is an abuse of discretion.

Counsel further objects to the director's statements that the petitioner "fails to demonstrate the beneficiary's skills and knowledge of the petitioner's practice that is so different or advanced that only the beneficiary is qualified to perform the services." Counsel asserts that such a standard is a clear departure from the Puleo

memorandum, which requires that the claimed specialized knowledge be merely different or advanced, not proprietary or unique. Counsel also disputes the director's conclusion that the beneficiary's knowledge must be "so distinctive and uncommon that it can only be achieved by someone possessing an advanced level of knowledge of the processes and procedures of the petitioning organization," noting that the regulations and the Puleo memorandum only require that the specialized knowledge be uncommon or advanced, not necessarily both.

Finally, counsel asserts that the director departed from established policy without a reasonable explanation by failing to address "the issue that the Beneficiary is essential to the continued survival of the Petitioner." Counsel emphasizes that evidence was presented to establish that the beneficiary's specialized knowledge is "absolutely critical to the continued operation of the Petitioner, and that it would be impossible to train another person to handle the Beneficiary's duties without great economic expense to the Petitioner." Counsel contends that the Puleo memorandum emphasizes that the "common key to finding specialized knowledge, whether it is knowledge of a process or a product, is that it would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm."

Counsel's assertions are not persuasive. On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge, or that he would be employed by the United States organization in a specialized knowledge capacity. Preliminarily, the AAO will address counsel's contention that the director's decision "is comprised solely of unsupported conclusions citing no relevant facts, and fails to apply established agency policies and precedent to the evidence presented." Upon review of the director's decision, the AAO finds that, while poorly articulated at times, the decision amply addresses the evidence submitted and applies the appropriate standard for "specialized knowledge" to the facts of the case. It must be noted that in making a determination as to whether knowledge possessed by a beneficiary is special or advanced, CIS relies on the statute and regulations, legislative history and prior precedent. This approach allows CIS to take into consideration the original intentions of Congress in creating the specialized knowledge classification, as well as prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. Upon review of the record, there is no indication that the director disregarded the statutory definition of specialized knowledge in adjudicating this matter or otherwise applied a narrower definition than that intended by Congress or established by precedent decisions. Nevertheless, as the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence & eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first 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. *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)).<sup>2</sup> As stated by the Commissioner in *Matter of*

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<sup>2</sup> 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

*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.

Here, the beneficiary's proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. For example, the beneficiary's responsibilities of directing the company's overall business activities, overseeing various functions, reviewing new market expansion opportunities, developing business plans, analyzing customer needs and business trends, recruiting staff, exercising discretionary authority in negotiating contract terms and product prices, establishing profit margins, and developing sales and marketing strategies are all tasks typically performed by any individual responsible for overseeing a start-up operation in a new market. The record is devoid of any documentary evidence that the beneficiary's proposed position would involve the application of special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. The petitioner's unsupported assertion that the beneficiary possesses specialized knowledge of its parent company's proprietary printing methods, business policies and industry contacts, and “specialized and proprietary knowledge” of its “corporate organization, business policies and goals, trade markets and procedures, and art and printing products,” without more, is insufficient to establish that the position of president requires an employee with specialized knowledge specific to the petitioner's group of companies. The petitioner has not defined the referenced “policies and goals,” “trade markets,” or “procedures,” nor has it explained why knowledge of the foreign entity's “proprietary printing methods” would be required to manage a business that sells products manufactured by companies which are wholly unrelated to the foreign entity. 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)).

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“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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

The AAO acknowledges that it is possible for an individual employed in a managerial or executive role to meet the criteria for specialized knowledge capacity set forth at section 214(c)(2)(B) of the Act. However, the petitioner has not established that the particular position offered to the beneficiary requires an individual with knowledge, experience or characteristics beyond possession of good business sense, negotiation and sales skills, a background in the printing industry, a network of existing business contacts in Japan, and knowledge of the Japanese language and culture. The petitioner does not manufacture a product or provide a service, nor does it market or sell its parent company's products or services. The beneficiary is needed to oversee the development of the business in the United States and to market and distribute two types of products, both of which are designed, developed and manufactured by unrelated companies. The beneficiary apparently has sufficient knowledge of these products to educate existing and potential customers regarding product features in order to complete sales transactions, and has previously recommended product customizations to the manufacturers in order to meet his targeted customers' needs. However, knowledge of products manufactured by other, unrelated companies cannot constitute specialized knowledge of the *petitioner's* interests. There is no evidence that the beneficiary would rely on "special" or "advanced" knowledge of the petitioner's products or processes in order to perform the described duties. The beneficiary's claimed specialized knowledge must relate specifically to the petitioning company.

Counsel represents the beneficiary's knowledge as a culmination of factors, which, when considered together, constitute the claimed "specialized knowledge." Relying on an example in the Puleo memorandum, counsel claims that where an individual possesses knowledge that may be general in nature, combined with knowledge regarding a particular company's policies and procedures, he is considered to have specialized knowledge because "it is uncommon for others to have this exact combination and interrelationship of knowledge specific to the company, especially if it would be difficult to train someone else to assume these duties." By itself, counsel's assertion that the beneficiary's qualifications are analogous to an example outlined in the Puleo memorandum is insufficient to establish the beneficiary's qualification for classification as an alien with specialized knowledge. Specifics are clearly an important indication of whether a beneficiary's duties encompass specialized knowledge; otherwise meeting the definition 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). As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor.

The beneficiary's claimed specialized knowledge is based on his native knowledge of Japanese language and culture, his "cultural" knowledge of the United States, his existing "business contacts" in Japan, his familiarity with the specific products sold by the petitioner by virtue of having previously worked for the petitioner in L-1A status, his undergraduate education in fine arts, and his familiarity with the petitioner's processes, policies and procedures, gained by virtue of having been responsible for establishing the U.S. subsidiary. As discussed above, the products sold by the petitioner, while varied, are manufactured by other companies and the beneficiary's knowledge of these products appears to be limited to the ability to market them to targeted clients and recommend customizations based on customer needs. Furthermore, although it may be unusual for a company to sell both art paper and wide format printers, mere familiarity with both types of products and markets does not constitute specialized knowledge. The beneficiary's own knowledge of the specific products sold by the petitioner has been gained only since his transfer to the United States and

subsequent reconfiguration of the petitioner's business plan, and the petitioner has presented no evidence to suggest that knowledge of these products could not be relatively easily transferred to another employee with experience in the printing industry. The combination of this general knowledge with the beneficiary's language and cultural knowledge, art school education and business contacts in Japan does not rise to the level of specialized knowledge contemplated by the statutory and regulatory definitions and precedent decisions. Again, the claimed specialized knowledge must relate specifically to the petitioning company.

Additionally, the petitioner has not submitted any evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other managers employed within the petitioner's group or working for other international employers within the printing industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. 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 term "specialized knowledge" is relative and cannot be plainly defined. 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 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.

The petitioner claims that the beneficiary possesses an advanced knowledge of the petitioner's policies and processes and their application in international markets. Specifically, counsel asserts that the knowledge is "advanced" because the beneficiary developed the company's policies, procedures and goals and continues to be responsible for them. Again the petitioner has not defined the policies, processes and procedures developed by the beneficiary. 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 attempts to differentiate the beneficiary's knowledge as special or advanced by claiming that "no one else is privy to this knowledge" and that "he alone possesses the knowledge required to direct and guide the development of the company." However, such a statement could be made regarding any manager of any small start-up company. Counsel concedes that not all managers and executives qualify as possessing specialized knowledge, but argues that the beneficiary qualifies because of his "key and essential position in the company, especially given that there are only two employees, and the fact that he was responsible for the creation and development of the company since inception." However, the AAO concurs with the director's observation that counsel's logic leads to the untenable conclusion that any manager or executive who failed to sufficiently develop a new office within the requisite one year may qualify for an extension of status as a specialized knowledge employee by virtue of having established the policies, procedures and operating plans for the new office. As discussed above, the duties performed by the beneficiary cannot be differentiated from those performed by any other manager charged with establishing a start up operation in a new market.

Accordingly, the AAO does not disagree with the petitioner's assertion that the beneficiary is important to the operation of the U.S. company. However, the statute and regulations require the petitioner to demonstrate that the beneficiary possesses, and that the proposed employment requires, special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests, or an advanced level of knowledge or expertise in the organization's processes and procedures. The beneficiary's knowledge and expertise, while valuable to the petitioner, does not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations.

Counsel asserts that the director disregarded the guidance provided by the Puleo memorandum, and asserts that the beneficiary possesses knowledge that is valuable to the petitioner's productivity, competitiveness, and financial position; and knowledge that cannot be easily transferred or taught to another individual. This selective excerpt from the Puleo memorandum represents an incomplete definition of specialized knowledge. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Likewise, while the beneficiary's contribution to the economic success of the company may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). Here, the beneficiary's role as the founder of the company may not be easily transferred to another individual, but the petitioner has not established that he actually possesses the claimed specialized knowledge. The fact that the petitioner and foreign entity consider the beneficiary to be irreplaceable is not sufficient to establish his eligibility for this visa classification.

The Puleo memorandum does not alter or supersede the statutory or regulatory definitions of "specialized knowledge." The petitioner has not submitted evidence to establish that the beneficiary satisfies the regulatory or statutory definitions. Furthermore, the Puleo memorandum states that "a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge." As discussed above, the petitioner has failed to adequately describe its products, standards or methodologies. Thus, the petitioner has failed to meet the general evidentiary standard espoused in the Puleo memorandum.

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*, 745 F. Supp. at 16. Based on the foregoing, the record does not establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted evidence that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge, as required by 8 C.F.R. § 214.2(l)(3)(iv). The evidence of record indicates that the beneficiary was employed as manager of the foreign entity's digital department from October 1999 to December 2001, where he was

responsible for “directing the setup and editing of digital images” used in production operations. No other evidence was submitted regarding the beneficiary’s role with the foreign entity or the foreign entity’s organizational structure, and it is therefore impossible to conclude that he was employed in a qualifying managerial, executive or specialized knowledge capacity based on this limited description. 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. For this additional reason, the petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

**ORDER:** The appeal is dismissed.