

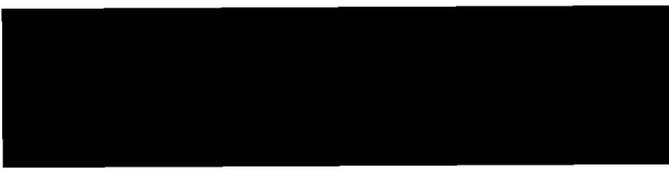


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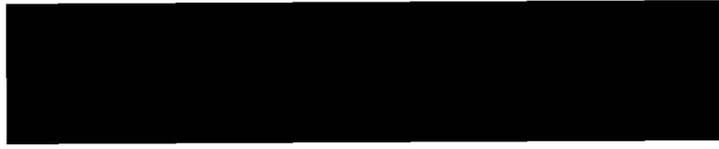
File: WAC 03 235 50733 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2006

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration 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 and affirmed his decision on a subsequent motion to reopen. 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 employment 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 Philippines corporation qualified to do business in California. It operates a chain of fast food restaurants. The petitioner claims that it is the subsidiary of [REDACTED], located in the Philippines. The beneficiary has been employed by the petitioner in L-1B status since January 2001, and the petitioner now seeks to extend his status as an "Operations Manager I" until January 2006.

The director initially denied the petition on February 9, 2004 pursuant to 8 C.F.R. § 103.2(b)(13), based on the petitioner's failure to respond to a November 3, 2003 request for evidence. The petitioner subsequently filed a motion to reopen, including evidence that it had timely responded to the director's request for evidence. The director granted the petitioner's motion to consider the evidence submitted, and denied the petition on July 7, 2004, concluding that the petitioner did not establish that the position offered to the beneficiary requires the services of an individual possessing specialized knowledge, or that the beneficiary possesses specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS) approved two previous petitions filed on behalf of the beneficiary for the same position and contends that the director erred in denying the instant petition absent a finding that there was a material error with regard to the previous approvals, a substantial change in circumstances, or new material information that adversely impacts the petitioner's or beneficiary's eligibility. Counsel relies on an April 23, 2004 CIS interoffice memorandum from William R. Yates, Associate Director for Operations in support of her assertion that the director was required to give deference to the prior approved petitions. Counsel asserts that the petitioner has demonstrated its need for the beneficiary's services in a specialized knowledge capacity and has set forth the need for knowledge that is unique to the petitioner and not generally available outside the petitioner's corporate group. In support of the appeal, counsel submits a brief and a copy of the most recent Form I-797A Approval Notice granting the beneficiary L-1B classification.

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

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

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has 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.

The nonimmigrant petition was filed on August 13, 2003. In an August 8, 2003 letter submitted in support of the petition, the petitioner indicated that the beneficiary would continue to serve as "Operations Manager I," a position requiring "specialized knowledge of the products, presentation and service techniques that constitutes the trade secrets of the parent corporation." Specifically, the petitioner indicated that the beneficiary would perform the following duties:

- (1) Direct, coordinate the manner food service is presented in accordance with the processes, procedures established worldwide by [the foreign entity] to enable [the petitioner's] food chain to compete in the market.
- (2) Educate the store crew team regarding the characteristic[s] of the company's unique product lines, equipment maintenance and processes;

- (3) Coordinate, train and manage the activities of the store crew as well as prospective managers in [the petitioner's] products, service techniques;
- (4) Direct, train U.S. employees of the corporation with established company policies, procedures and standards;
- (5) Impart [the foreign entity's] operational procedures to the new store crew and prospective managers in the various food chain activities unique to the company's standards and policies.

The purpose of his important mission is to develop consistent service and product standards worldwide and to increase awareness of unique services and food products that have been uniquely developed by the mother company . . .

* * *

The services of [the beneficiary] is [sic] therefore required by the company to oversee the operations of other new outlets and impart to its new employees the standards and service techniques which have been uniquely developed by the mother company, especially at this crucial stage of expansion.

[The beneficiary] has had a key role in the setting up of the company's latest outlets. His continuing presence is essential to bring the company's development efforts to a success.

On the L classification supplement to Form I-129, the petitioner indicated that prior to his transfer to the United States, the beneficiary had served as a shift manager for the petitioner's parent company, with the following duties:

Leads kitchen crew to achieve highest standards of product quality and ensure that product is always available during shift; Leads counter and dining crew to achieve the highest standards of customer service and speed of service elvels [sic]; Ensures that "clean as you go" is practiced by all crew; Ensures that cleanliness, orderliness and sanitation levels are maintained by all crew on shift. Makes sure that cleaning and preventive maintenance schedules are implemented as scheduled; Implements travel path regularly and directs store crew to attend to identified food, service and cleanliness needs; Implements management activity checklists consistently that shift requirements are attended to; Ensures that store is opened on time and that closing activities are not implemented prior to official store close; Ensures that proper shift endorsement is accomplished at all times for each incoming or outgoing Shift Manager; Ensures that scheduled crew training are accomplished during shift; Provides coaching whenever necessary; Ensures that discipline is maintained during shift; Ensures that proper manning and positioning are implemented and that adjustments are done to achieve high food service cleanliness levels.

The director found the evidence submitted insufficient to establish that the beneficiary has specialized knowledge or that he has been and will be employed in a specialized knowledge capacity. Accordingly, on November 6, 2003, the director instructed the petitioner to provide the following additional documentation

and information: (1) the number of persons holding the same or similar position as the beneficiary at the U.S. location where the beneficiary will work; (2) whether any other employees at the company's U.S. locations perform the duties stated in the beneficiary's proposed position; (3) an explanation regarding how the duties the beneficiary performed abroad and those he will perform in the United States are different or unique from those of other workers employed by the petitioner or other U.S. employers in this type of position; (4) an explanation regarding how the beneficiary's training is exclusive and significantly unique in comparison to that of others employed by the petitioner or another person in this particular field; and (5) the U.S. company's line and block organizational chart. The petitioner was advised that it had twelve weeks, until January 29, 2004, to submit the requested evidence.

The director initially denied the petition on February 9, 2004, pursuant to 8 C.F.R. § 103.2(b)(13), observing that the petitioner had failed to respond to the request for evidence by the required date. The director determined that the petitioner had failed to "establish eligibility of the beneficiary and the position." The petitioner subsequently filed a motion to reopen, asserting that the response to the request for evidence was submitted on January 29, 2004, and the director erred by denying the petition without first reviewing the timely submitted evidence. The petitioner included a complete copy of its response to the request for evidence in support of the motion.

In a letter dated January 26, 2004, the petitioner stated that there is "currently no person holding the same or similar position as the beneficiary at the US location where the beneficiary will be employed." The petitioner noted that it employs other operations managers at other U.S. locations, and that "due to the nature of the duties . . . it has always been necessary to transfer employees from the parent company for this position." In response to the director's request for a description of any special or advanced duties to be performed by the beneficiary, the petitioner provided essentially the same job description that was submitted with the initial petition.

In reference to the specialized knowledge required for the offered position, the petitioner explained as follows:

In order to perform the above-enumerated duties, he or she must possess knowledge of the products' presentation, service techniques and operational knowledge of the products' presentation, service techniques and operational procedures that constitutes trade secrets of [the petitioner's group]. The production methods, the quality services, the superior tasting food presentation and taste which result in superior quality products and high level of customer satisfaction are all aspects of the company that are unique to the [petitioner's] food chain and which constitutes the "Jollibee culture."

The products of [the petitioner] such as the peach mango pie, banana langka pie are not sold anywhere in the U.S. Even its other products such as aloha burgers, pansit palabok, fried chicken[,] spaghetti, tapa, tosilogs have a taste which is only unique to [the petitioner]. The manner and technique how these products are prepared and served are only unique to the Jollibee culture. As earlier stated, the services of the beneficiary is needed badly by the petitioner because of his specialized knowledge in the operational procedures.

It is therefore necessary to the success of the expansion efforts of the petitioner to transfer to the United States a person with the unique knowledge of the Jollibee culture and which knowledge can be gained only from years of prior experience with the Jollibee food chain. This knowledge of what is termed as the Jollibee culture and its superior unique quality products and services cannot be duplicated in the general labor market and are proprietary to [the petitioner's organization]. It is knowledge that is unique to [the foreign entity's] employees who have been involved in key positions in the management, development, production, promotion, of the product and operation of the food chain that makes this knowledge specialized. The duties described above are different or unique from those performed by other workers currently employed or to be employed by the petitioner. The operational procedures, products, equipment and services of which the beneficiary of this petition has specialized knowledge may not be obtained from other U.S. employees as the operational procedures, service techniques and specifications of most of its equipment are patterned from the parent company.

Since a substantial part of the beneficiary's work would involve the training and imparting of the . . . operational procedures and service techniques to newly hired US workers, it is essential that the person who will occupy the position of Operations Manager, possess the unique knowledge of Jollibee culture, and which specialized knowledge can only be obtained through several years of work experience in the [foreign entity's] fast food chain operations. The operational procedures would include how the mother company will prepare, process, and serve its products to its customers. Other operational procedures would include the handling of supplies which have been imported from abroad and the maintenance of the Jollibee world class standard of service and efficiency.

The beneficiary's training is exclusive and significantly unique in comparison to any other person in the field as operations manager. The beneficiary has been training with the [foreign entity] and has obtained the manner and trademark for selling the type of products and services that are exclusively [sic] only to [the petitioner's group]. The beneficiary has worked with the petitioner's mother company in various capacities and more importantly she has been actually responsible in giving training, setting up systems for the [foreign entity]. The duties of the beneficiary could therefore not be handled by any U.S. worker who do [sic] not possess the specialized knowledge of the "Jollibee culture."

The petitioner further noted that it intended to open a total of 28 stores between 2004 and 2006, and stated that the beneficiary's services are needed to ensure that the company's "unique food standards and quality, and services, and operational procedures are followed in the latest stores to be opened by the petitioner." The petitioner submitted a letter from the foreign entity confirming that the beneficiary had completed a total of fifteen training seminars between April 1997 and January 2001. The petitioner included copies of completion certificates for five courses and provided excerpts from several operations training manuals. The petitioner stated that the seminars and training undertaken by the beneficiary with the parent company are unique to the parent company and cannot be duplicated elsewhere. The petitioner provided an organizational chart for "Honeybee Foods Corporation" and a list of employees to be supervised by the beneficiary, including three shift supervisors and sixteen "service crew" employees.

The director granted the petitioner's motion to reopen in order to consider the petitioner's response to the request for evidence. The director denied the petition on July 7, 2004, concluding that the petitioner had not established that the beneficiary possesses specialized knowledge, or that the position being offered requires the services of an individual possessing specialized knowledge. Specifically, the director found that the beneficiary's job description paraphrased the regulatory requirements for specialized knowledge classification, and noted that the petitioner did not explain or document how the beneficiary's role as an operations manager is different from a first-line supervisor at any other international chain of fast food restaurants. The director further observed that the beneficiary's knowledge is merely general knowledge that allows him to provide a service. Accordingly, the director concluded that the beneficiary has not been shown to be serving in a specialized knowledge capacity with respect to the petitioner's product, nor has he been shown to possess an advanced level of knowledge of the processes and procedures of the petitioner's company.

On appeal, counsel for the petitioner asserts that the director erred in denying the petition in light of the two previous L-1B approvals granted to the beneficiary for the same U.S. position. Referring to an April 23, 2004 CIS interoffice memorandum from William R. Yates, Associate Director for Operations, counsel claims that the director was obligated to give deference to the prior decisions in which it was concluded that the beneficiary qualified for the benefit sought. Counsel further argues that, since the director departed from the previous decisions, the director was required to identify a material error with regard to the previous approvals, a substantial change in circumstances, or new material information that adversely impacts the petitioner's or beneficiary's eligibility. Counsel contends "none of these circumstances are present in the current L-1B petition extension."

Counsel further asserts that the petitioner has sufficiently demonstrated its need for the beneficiary to perform duties "which are unique to the petitioner herein and which are not generally available to individuals outside [the petitioner's corporate group.] Counsel contends that "despite the very detailed job description provided by the petitioner," the director "simply dismisses the petitioner's representations according them no credibility or weight." Counsel concludes that the position "is indeed specialized and does require specialized knowledge possessed by an individual within the petitioner's organization. The job description provided does require an advanced level of knowledge and/or expertise in the corporations' processes and procedures."

On review, the petitioner has not established 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), or that the intended position requires the services of an employee with specialized knowledge.

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.*

In the instant matter, the petitioner submitted only a limited description of the beneficiary's duties and failed to document that the job duties to be performed require specialized knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D). As noted by the director, the duties cannot be distinguished from the duties performed by any supervisory employees working in any "fast food" restaurant. The described duties primarily involve

training, overseeing and supervising kitchen, dining room, counter and utility “crew” and “prospective managers” and ensuring that they follow established procedures, policies, and standards for cooking fast food, handling sales transactions and customer service duties, cleaning the kitchen, dining area and restrooms, and other routine functions involved in operating a restaurant. In response to the director’s request for a description of any special or advanced duties to be performed by the beneficiary, the petitioner did not elaborate, but merely repeated the initial job description. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Further, although the petitioner claimed that the beneficiary will provide training to managers and oversee training at new restaurants, this claim is not substantiated by evidence in the record and appears to be speculative in nature. At the time the petition was filed, the beneficiary was assigned to the one specific restaurant with responsibility for overseeing the employees providing the day-to-day services at this location. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Accordingly, the claimed specialized knowledge is based solely on the beneficiary’s knowledge of “unique” procedures utilized by the petitioner’s group and the “Jollibee culture.” The petitioner has not established that such knowledge is noteworthy or uncommon, such that it can be considered “specialized.” Although requested by the director, the petitioner failed to explain how the training is different compared to that provided by similar companies operating fast food restaurants around the world. Compared to other operations managers employed in the fast food industry, the beneficiary possesses an unspecified amount of training that is not offered within any other restaurant chain. However, the petitioner has submitted no evidence to suggest that its procedures and methods, although “proprietary,” are significantly different from those used by other large fast food chain restaurants. Furthermore, many of the training courses completed by the beneficiary do not appear to be specific to the petitioner’s organization, but rather provided general instruction in supervision, management and sales techniques. A fast food manager who had worked for an unrelated restaurant chain could reasonably be expected to perform the beneficiary’s duties with minimal additional training.

The petitioner claims that only an employee with several years of management experience with the foreign entity would be qualified to train U.S. staff in restaurant procedures and standards. The evidence in the record does not substantiate this claim. The submitted training manuals indicate that an employee with no previous experience with the organization can complete the training to become a “shift manager” in approximately three months. The foreign entity’s web site indicates that its franchisees and their management teams complete a three-month training program that equips them with all the knowledge needed to independently manage their own restaurants. The record indicates that the petitioner intends to operate franchised restaurants in the United States. It is reasonable to conclude, and the petitioner has not shown otherwise, that the petitioner will not require U.S. franchisees to hire management personnel who possess years of experience with the petitioner’s overseas operations. The submitted evidence does not illustrate that the proprietary operating methods or procedures of the petitioner are different or special in the petitioner’s industry, or that the length and type of training required for a management position in a Jollibee fast food restaurant exceeds normal requirements for this type of position.

The petitioner asserts that its products are not sold by any other food chain, but has not substantiated its claim that an employee with specialized knowledge is needed to train U.S. employees in the operational procedures needed to prepare and serve these products. While the petitioner's specific menu, which includes some traditional Filipino items in addition to hamburgers, chicken, and spaghetti, may be relatively new to the United States market, its operating procedures have not been shown to be any different from those used by the dozens of fast food chains which are prevalent in the United States. The petitioner has not established that the knowledge needed to train employees to prepare and sell a Filipino dish is significantly different from that required to train employees to prepare and sell other "fast food" fare. Accordingly, the petitioner has not established that the beneficiary's knowledge is uncommon or noteworthy, such that it could be considered "special knowledge" as contemplated by the regulations. While the AAO can appreciate the petitioner's preference for experienced personnel to oversee its entry into the United States market, there is no evidence that special knowledge or experience of the foreign entity's products and services or advanced knowledge of the foreign entity's processes is actually required in order to perform the day-to-day oversight of restaurant operations for the petitioner's U.S. fast food stores.

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 (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. As noted by the director, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills, experience and general knowledge enable her to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. There is no indication

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] 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.

that the beneficiary's background is specialized, in that it would enable her to perform a key process or function of the company.

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*, 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.

Here, the petitioner makes no claim that the beneficiary's knowledge is advanced compared to other similarly employed workers within the petitioner's group, nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other employees. Compared to other employees within the petitioner's corporate group, the beneficiary has likely received the same or similar training available to and completed by all supervisory and managerial employees working in the foreign organization's hundreds of restaurants. Based on the petitioner's statements and the evidence presented, the AAO cannot conclude that the beneficiary qualifies as "key personnel" within the petitioner's family of companies based on his training and previous assignments. See *Matter of Penner*, 18 I&N Dec. at 53. The evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's products or procedures as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. While it may be correct to say that the beneficiary is a skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of a specialized knowledge employee.

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

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, “[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.” 18 I&N Dec. 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.”)

The petitioner has failed to demonstrate that the beneficiary’s training, work experience, or knowledge of the company’s processes and their application in international markets is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. 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 record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For this reason, the appeal will be dismissed.

Counsel asserts that it is an abuse of discretion for the director to deny the instant petition after approving two previous petitions filed by the petitioner on behalf of this beneficiary for the same position. Referring to an April 23, 2004 CIS interoffice memorandum from William R. Yates, Associate Director for Operations, counsel further notes that since there was no substantial change in circumstances, the director was required to make a determination of “material error” with regard to the prior approved petition or acknowledge receipt of new material information that adversely impacts the petitioner’s or beneficiary’s eligibility. Counsel claims that the director was otherwise required by current CIS policy to give deference to the determination of prior adjudicators who concluded that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity. *See* Memorandum of William R. Yates, Associate Director for Operations, USCIS, to Service Center Directors, et al, *The Significance of a Prior CIS Approval on a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity* HQOPRD 72/11.3 (April 23, 2004)(“Yates Memo”).

Counsel’s assertion is not persuasive. It must be emphasized that that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

While CIS approved two other petitions that had been previously filed on behalf of the beneficiary, the prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, if the previous nonimmigrant petitions filed by the petitioner were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present request to extend the beneficiary's status.

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). CIS memoranda merely articulate internal guidelines for CIS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

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

The director is instructed to review the beneficiary's previous nonimmigrant approvals for possible revocation, pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

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.