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U.S. Citizenship and Immigration Services

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[redacted]

File: WAC 05 257 51309 Office: CALIFORNIA SERVICE CENTER Date: AUG 06 2007

IN RE: Petitioner:
Beneficiary: [redacted]

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

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, Chief
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 extend the employment of the beneficiary as a project leader as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, is a "custom software solutions" business that operates based on an "onsite/offshore business model." The petitioner states that it "offers a full range of project management, software development and maintenance services to [its] Fortune 500 customers." The petitioner seeks to extend the employment of the beneficiary as a software engineer for a period of two years.

Citing to the anti "job shop" provisions of the L-1 Visa Reform Act of 2004, the director denied the petition as an impermissible arrangement to provide labor for hire.[1] Specifically, the director concluded that the beneficiary, who will be stationed primarily at a worksite of an unaffiliated employer, will be employed in a position which is essentially an arrangement to provide labor for hire for the unaffiliated employer, [redacted] (hereinafter "the unaffiliated employer"). The director further determined that the beneficiary does not have specialized knowledge of a product or service specific to the petitioner.

On appeal, the petitioner asserts that the beneficiary has specialized knowledge of the petitioner's processes and procedures and not those of the unaffiliated employer. In particular, the petitioner asserts that the beneficiary has specialized knowledge of the design, development, and testing of interfaces to SAP Business

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[1]The term "job shop" is commonly used to describe a firm that petitions for aliens in L-1B status to contract their services to other companies, often at wages that undercut the salaries paid to U.S. workers. Upon introducing the L-1 Visa Reform Act, [redacted] described the abuse as follows:

> The situation in question arises when a company with both foreign and U.S.-based operations obtains an L-1 visa to transfer a foreign employee who has "specialized knowledge" of the company's product or processes. The problem occurs only when an employee with specialized knowledge is placed offsite at the business location of a third party company. In this context, if the L-1 employee does not bring anything more than generic knowledge of the third party company's operations, the foreign worker is acting more like an H-1B professional than a true intracompany transferee. Outsourcing an L-1 worker in this way has resulted in American workers being displaced at the third party company.

149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003).

In contrast with the H-1B visa classification, the L-1B visa classification does not contain any provisions to protect U.S. workers. *See generally*, 8 C.F.R. § 214.2(h). The L-1B visa classification is not subject to a numerical cap, does not require the employer to certify that the alien will be paid the "prevailing wage," and does not require the employer to pay for the return transportation costs if the alien is dismissed from employment. Additionally, by filing under the L-1B classification, an employer avoids paying the $1,500 fee required for each new H-1B petition which funds job training and low-income scholarships for U.S. workers. Sec. 214(c)(9) of the Immigration and Nationality Act.

Modules. Further, the petitioner asserts that the beneficiary will use his specialized knowledge of SAP, JAVA, and SAP Business Connector in his capacity as an employee of the petitioner, which has been hired by the unaffiliated employer to implement SAP Business Modules across its organization.[2]

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) further states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
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> (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.
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> (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.
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> (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.

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

> 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.

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[2]The petitioner repeatedly asserts that the beneficiary possesses specialized knowledge and that his knowledge could not be duplicated by any employee currently located in the United States. Despite the claim that the beneficiary is the only employee with this specialized knowledge, the AAO notes that the petitioner and its predecessor entity, IT Solutions, Inc., has filed more than 900 L-1B petitions in the previous 7 years. During Fiscal Year 2006 alone, the petitioner filed more than 349 L-1B petitions.

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.

Finally, as amended by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F), provides:

> An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 1101(a)(15)(L) if –
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> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act was created by the L-1 Visa Reform Act of 2004 and is applicable to all L-1B petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). As explained above, the primary purpose of the L-1 Visa Reform Act amendment was to prohibit the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman [redacted] July 29, 2003, available at <http://judiciary.senate.gov/member_statement.cfm?id =878&wit_id=3355> (accessed on July 16, 2007).

In evaluating a petition subject to the terms of the L-1 Visa Reform Act, the AAO must emphasize that the petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B

intracompany transferee.

As a threshold matter in the analysis, Citizenship and Immigration Services (CIS) must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. Section 214(c)(2)(F) of the Act.

The petitioner initially explained that the beneficiary would be required to provide services in the petitioner's offices in California and Massachusetts, as well as at the offices of the unaffiliated employer, [redacted] c., in Phoenix, Arizona. After the director requested additional evidence to explain where the beneficiary would work, the petitioner failed to clarify this question by submitting human resource records or a contract covering the beneficiary's work. Finally, on appeal, the petitioner did not contest the director's finding that the beneficiary would be primarily stationed at the worksite of the unaffiliated employer. Accordingly, the AAO concludes that the beneficiary will be primarily employed as a software engineer at the worksite of the unaffiliated employer.

Therefore, under the terms of the L-1 Visa Reform Act, the petitioner must establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

The first issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the alien will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. Section 214(c)(2)(F)(i) of the Act.

Notwithstanding the director's finding to the contrary, the petitioner has not satisfied this prong of the L-1 Visa Reform Act test. The petitioner asserted in the Form I-129 and supporting letters that the petitioner's employees are "supervised and controlled daily by [the petitioner's] managers onsite and through regional Account Managers." However, no evidence was submitted in support of this statement. The petitioner does not identify the beneficiary's current manager or explain how, exactly, the beneficiary is managed and controlled while offsite at the unaffiliated employer's workplace. Going on record without supporting evidence will not satisfy the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Furthermore, the petitioner disregarded the director's request for evidence addressing whether the beneficiary will be controlled and supervised principally by the petitioner. On November 28, 2005, the director requested copies of contracts, statements of work, work orders, and service agreements between the petitioner and the unaffiliated employer specifically for the services to be provided by the beneficiary. In response, the petitioner submitted a "sample" Statement of Work that did not specifically address the work to be provided by the beneficiary. Additionally, the "sample" was composed of a draft or skeletal Statement of Work (labeled "CTR-D-05-XXXX") that was appended with the signature page of a different Statement of Work (labeled "CTR-D-05-0061"). This altered document raises serious questions regarding the authenticity and truthfulness of the "sample" Statement of Work. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Despite the director's request for copies of contracts, statements of work, work orders, and service agreements between the petitioner and the unaffiliated employer for the services to be provided by the beneficiary, the petitioner submitted an altered copy of a non-specific Statement of Work and a general letter. In the letter, the petitioner made the conclusory and self-serving statement that it is not a "job shop" and that its staff is supervised and controlled daily by the petitioner's onsite managers and regional account managers. Accordingly, the petitioner's failure to fully respond to the director's request for evidence is fatal to its claimed eligibility. The petitioner's failure to submit the requested evidence precluded a material line of inquiry and shall be grounds for denying this petition. 8 C.F.R. § 103.2(b)(14).

Because the director's conclusion is not supported by the record, the decision of the director will be withdrawn as it relates to this issue. Accordingly, as the petitioner has not established that the beneficiary will be controlled and supervised by the petitioner during his employment at the unaffiliated employer's workplace, the petition may not be approved for this reason.

The second issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

The petitioner described the beneficiary's job duties and purported specialized knowledge in a letter dated September 15, 2005 as follows:

> As a Software Engineer with [the petitioner], [the beneficiary] will be responsible for the Customization, Design, and Development of applications specific to client requirements in the areas such as Webmethods Integration Server, Developer, SAP Adapted, JDBC Adapter[,] etc. He will be primarily working on testing/implementation/enhancement of existing system [sic] subsequently he will be involved in forthcoming projects from our client – [the unaffiliated employer]. He will be responsible to provide [sic] the necessary technical guidance & support for software implementation, maintenance & system testing activities for our clients. He will also be interfacing with various [petitioner] Clients and customizing the systems to their specific needs. In order to carry out this engagement, [the beneficiary] will be required to work in [the petitioner's] offices in San Ramon, CA, Southborough[,] MA, as well as our client [the unaffiliated employer], Phoenix, AZ.

As previously noted, the director requested additional evidence on November 28, 2005. The director requested, *inter alia*, further evidence establishing that the beneficiary has specialized knowledge; evidence that he will be controlled and supervised by the petitioner; a description of where the beneficiary will work; and evidence that the placement of the beneficiary at the unaffiliated employer's worksite is not an arrangement to provide labor for hire. The director specifically requested copies of contracts, statements of work, work orders, and service agreements between the petitioner and the unaffiliated employer for the services to be provided by the beneficiary. The director also requested copies of the petitioner's human resource records that would provide the beneficiary's job description and worksite location.

The petitioner failed to fully comply with the director's request. In response, the petitioner submitted a letter dated February 16, 2006, a copy of the beneficiary's resume, and a copy of a "sample" Statement of Work

between the petitioner and the unaffiliated employer. The petitioner did not submit the Statement of Work that covers the beneficiary's services. Additionally, the "sample" Statement of Work appears to have been altered or amended prior to submission, as the signature page does not match the cover page. Specifically, the cover page is labeled "CTR-D-05-XXXX" and the signature page is labeled "CTR-D-05-0061." Finally, the petitioner also failed to submit human resource records or any other documents that provide the beneficiary's official job description and worksite location.

In the February 16, 2006 letter, the petitioner asserts that the beneficiary will be supervised and controlled daily by onsite managers employed by the petitioner. The petitioner also provided the following description of the beneficiary's purported specialized knowledge:

> Due to [the beneficiary's] experience centers around SAP Business Modules [sic]. [The petitioner] has been engaged by [the unaffiliated employer] to implement SAP across the entire [unaffiliated employer's aerospace] business unit. SAP is in high demand globally and engineers with the appropriate skills and knowledge are in short supply. Additionally, having had experience with the [the unaffiliated employer's] SAP project offshore for more than two-years, [the beneficiary] has significant specialized knowledge of the processes, procedures, and development history of the project.
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> [The beneficiary] has been involved in the [unaffiliated employer's SAP] project right from its inception so he has specialized knowledge of the requirements from the customer more clearly and hence can turn around with the finished software more efficiently and quickly. Also, [the beneficiary] has a thorough understanding of the business processes that are followed at [the unaffiliated employer] and also have contributed to streamline some of these processes. During the course of his work, he has developed a unique working relationship with the client and has irreplaceable knowledge of the design of the middleware system. It would not be possible to train another engineer to have [the beneficiary's] knowledge and abilities in connection with this highly critical project. The Middleware solution [the beneficiary] is using is SAP Business Connector and he has been solely responsible for the set up and end to end deployment of the Middleware solution at the [unaffiliated employer].
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> Given [the beneficiary's] understanding of the [unaffiliated employer's] businesses processes, his expertise in all the technical areas of skill required for the job, he is the ideal specialized knowledge professional for this role. Indeed, [the petitioner] would not be able to replace [the beneficiary] if his services are not secured through the L-1B program.

On April 11, 2006, the director denied the petition. The director concluded that the beneficiary, who will be stationed primarily at a worksite of an unaffiliated employer, will be employed in a position which is essentially an arrangement to provide labor for hire for the unaffiliated employer. The director further determined that the beneficiary does not have specialized knowledge of a product or service specific to the

petitioner. Specifically, the director concluded as follows:

> It appears from the record that the placement of the beneficiary outside the Petitioning organization is essentially an arrangement to provide labor for hire rather than the placement in connection with the provision of a product or service. The service the petitioner is providing is, essentially, information technologists for hire to change the petitioner['s] client's already existing system and/or software rather than develop their own software. The specialized knowledge the beneficiary possesses is that of the petitioner's tools, procedures, and methodologies to be applied to the client's existing program. Therefore, the beneficiary's knowledge is only tangentially related to the performance of the proposed offsite activity.
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> In essence, the beneficiary will be working on a product that is used to conform to the client's specification and needs, rather than a product unique to the specifications and needs of the petitioner. In this case, the specialized knowledge is not specific to the petitioner. As such, the petitioner has not established that the placement of the beneficiary at the worksite of the unaffiliated employer is not merely labor for hire.

On appeal, the petitioner asserts that the beneficiary has specialized knowledge of the petitioner's processes and procedures and not those of the unaffiliated employer. In particular, the petitioner asserts that the beneficiary has specialized knowledge of the design, development, and testing of interfaces to SAP Business Modules in general. Further, the petitioner asserts that the beneficiary will use his specialized knowledge of SAP Business Modules in his capacity as an employee of the petitioner, which has been hired by the unaffiliated employer to implement SAP Business Modules across its organization. Finally, the petitioner asserts that it is not a "body shop" and that it "does not place engineers in staff augmentation roles where [the petitioner] relinquish[es] daily control" over its employees. To the contrary, the petitioner claims to be a software solutions service provider and that its staff works on specific projects under the direction of the petitioner.

Overall, the petitioner described the beneficiary as having specialized knowledge "of the processes, procedures, and development history of the project" being implemented for the unaffiliated employer due to the beneficiary's involvement in the project abroad. The petitioner further asserts that the beneficiary's specialized knowledge of "the [unaffiliated employer's] requirements" permits him to work more efficiently. Finally, the petitioner asserts that the beneficiary's understanding of the unaffiliated employer's business processes have contributed to the streamlining of some of these processes and that, during the course of his work, the beneficiary has developed a "unique working relationship with the client" and that he has "irreplaceable knowledge of the design of the middleware system."

Upon review, the petitioner's assertions are not persuasive. The petitioner has not described the beneficiary as one having specialized knowledge of the petitioner's processes and procedure. To the contrary, the petitioner has described the beneficiary as one having knowledge of the processes and procedures of the unaffiliated employer. Accordingly, the beneficiary is ineligible under section 214(c)(2)(F)(ii) for classification as an L-1B intracompany transferee having specialized knowledge specific to the petitioning employer. In order for an offsite specialized knowledge worker to be eligible for L-1B classification, the petitioner must establish that the beneficiary is not being employed as "labor for hire" for the unaffiliated employer. In this matter, as

the petitioner has asserted that the beneficiary's knowledge is related to the unaffiliated employer's processes and procedures, the beneficiary falls squarely within the prohibition imposed by the L-1 Visa Reform Act of 2004 on the "outsourcing" of L-1B nonimmigrants who do not have specialized knowledge related to the provision of a product or service specific to a petitioner.

Moreover, a review of the facts of this petition reveal that this is exactly the type of employment relationship the L-1 Visa Reform Act of 2004 was adopted to prohibit. As explained above, this legislation was proposed to primarily prevent the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software. In this matter, the petitioner has indicated that the project on which the beneficiary has been working, both abroad and in the United States, involves the implementation of SAP Business Modules across the entire aerospace business unit of the unaffiliated employer. The petitioner, which describes the SAP Business Modules as being in "high demand globally," has been hired to provide employees to implement this widely available software in the United States. Importantly, the petitioner is not providing these implementation services in connection with the sale of any technology products, and the beneficiary's purported specialized knowledge has not been established to be related to the petitioner's provision of a service other than the provision of labor. To the contrary, the petitioner has described the beneficiary as having specialized knowledge of the unaffiliated employer's processes and procedures.

Accordingly, the petitioner failed to establish that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, and the petition may not be approved for that reason.[3]

Beyond the decision of the director, even if the beneficiary's knowledge were proven to be specific to the petitioning employer, the petitioner has also failed to establish that this knowledge is specialized as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and that the beneficiary has been or will be employed in a specialized knowledge capacity.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8.C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, the petitioner fails to establish that the beneficiary's positions abroad and in the United States require an employee with specialized knowledge or that the beneficiary has specialized knowledge.

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[3]It is noted that, on appeal, the petitioner adjusted the beneficiary's job description in an attempt to establish that he has specialized knowledge of the petitioner's processes and procedures rather than of the processes and procedures of the unaffiliated employer. However, on appeal a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialized knowledge position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States will require "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced software employees with experience in implementing SAP Business Modules. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

Despite the petitioner's assertions, the petitioner has not established that the beneficiary's knowledge of the implementation of SAP Business Modules, either in the context of the ongoing project being performed for the unaffiliated employer or in connection with his employment with the petitioner, constitutes "specialized knowledge." The record does not reveal the material difference between the beneficiary's knowledge of SAP Business Modules and the ongoing implementation project and the knowledge possessed by similarly experienced software engineers in the industry or employed by the petitioner's organization. Without producing evidence that the petitioner's SAP Business Module implementation services are different in some material way from similar services offered on the market by similarly experienced software professionals, the petitioner cannot establish that the beneficiary's knowledge is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by similarly experienced personnel engaged within the beneficiary's field of endeavor. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced software professional who has been, and would be, a valuable asset to the petitioner's organization and to the unaffiliated employer. However, it is 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)). As stated by the Commissioner in *Matter of Penner*, 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." 18 I&N Dec. 49, 52 (Comm. 1982). 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 firm's 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 the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

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. REP. 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. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc. v. Attorney General,* 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.")

A 1994 Immigration and Naturalization Service (now CIS) memorandum written by the then Acting Associate Commissioner also directs CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general

knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other similarly experienced persons employed by the petitioner's organization or in the industry generally. As the petitioner has failed to document any materially unique qualities to the petitioner's processes and procedures, the petitioner's claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a "key" employee. There is no indication that the beneficiary has knowledge that exceeds that of any software engineer with experience with SAP Business Module implementation, or that he has received special training in the company's methodologies or processes which would separate him from any other persons employed with the petitioner's organization or in the industry at large.

The legislative history of 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.* Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad, and would not be employed in the United States, in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

The initial approval of an L-1B petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *See Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's

enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.