U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: SRC 06 052 53330 Office: TEXAS SERVICE CENTER Date: JUN 06 2007

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON 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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Florida corporation, claims to be a yacht broker and specifically claims to design, subcontract the production, and market top-of-the-line engine-powered boats. It seeks to temporarily employ the beneficiary as a Sales Engineer in the United States and filed a petition to classify the beneficiary as a 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 director denied the petition concluding that the petitioner had not established that (1) the beneficiary had been employed abroad in a specialized knowledge position; or (2) the intended employment in the United States required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner has in fact met the burden of proof in this matter and avers that the director's decision was erroneous and subjective. In support of this position, a brief and additional evidence is submitted.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

(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 gained specialized knowledge during his employment abroad and was thus employed in a specialized knowledge position; 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.

In a letter dated November 30, 2005, the petitioner advised that the beneficiary had been employed by the foreign entity as a sales engineer since February of 2004. It further stated that the beneficiary obtained a Master's Degree in Engineering with a specialization in Industrial Engineering from the University of Tours and that he was fluent in both French and Italian. Regarding the transfer, the petitioner stated that the beneficiary would occupy the same position in the United States as that of his current position abroad.

The petitioner provided the following description of the beneficiary's current duties as sales engineer with the foreign entity:

> [The beneficiary], during his professional experience with [the foreign entity], and in conjunction with his academic background, has acquired the specialized knowledge and skill required to fill the position of Sales Engineer in our South Florida office. [The beneficiary's] advanced level of expertise and knowledge of [the parent company's] lines of yachts, especially the Leopold and Mangusta models, is not readily available in the United States labor market. His experience with our parent company has provided him with knowledge that is valuable to our company with regard to competitiveness in the marketplace for luxury mega yachts as he is intimately familiar with the design, manufacture, specifications and handling of these yachts. This knowledge can only be gained [with the parent company] and cannot be duplicated in the general labor market.

The petitioner further stated that the beneficiary performs the following duties:

- Identifying new clients for the Leopold and Mangusta yacht lines and maximizing customer potential in designated regions;
- traveling to visit potential clients;
- establishing new, and maintaining long-term rapports with customers;
- managing and interpreting customer requirements – listening to clients and using astute questioning to understand, anticipate and exceed their needs;
- persuading clients that a Leopold or Mangusta yacht will best satisfy their needs in terms of quality, price, and delivery;
- calculating quotations for clients;
- negotiating tender and contract terms, to meet both client and company needs;
- negotiating and closing sales by agreeing terms and conditions;
- offering after-sales support services;
- administering client accounts;

- analyzing costs and sales;
- preparing reports for head office;
- meeting regular sales targets;
- recording and maintaining client contact data;
- coordinating sales projects;
- supporting marketing activities by attending trade shows, conferences and other marketing events;
- performing technical presentations and demonstrating how the specific yacht will meet client needs;
- providing pre-sales technical assistance and product education;
- liaising with other members of the sales team and other technical experts;
- solving client problems;
- assisting in the design of custom made yachts based on the client's requirements;
- providing training and producing support material for other members of the sales team.

The petitioner also stated that since he began his employment with the foreign entity, the beneficiary created a database of all yachts for sale by the parent company and thus was familiar with the specifications of each.

Upon review of the evidence submitted, the director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of Sales Engineer required an employee with specialized knowledge as defined by the regulations. The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified persons in the industry, or that the beneficiary's knowledge was truly noteworthy or uncommon. On appeal, counsel for the petitioner points out that there is a wide array of differences between large open yachts which are manufactured, marketed and sold by the petitioner and those manufactured, marketed, and sold by other companies. Furthermore, counsel asserts that the foreign entity is one of only a select few companies which specialize in large open yachts.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge, that he was employed abroad in a specialized knowledge capacity, or that the proposed employment would be in a specialized knowledge capacity.

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) and (iv). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided a lengthy description of the beneficiary's employment in the foreign office and his responsibilities as its Sales Engineer. However, despite this detailed overview, the petitioner failed to provide evidence regarding what exactly set apart the beneficiary's knowledge from other similarly trained sales engineers in the field and what training he had received to set him apart from other similarly qualified individuals with the foreign entity, with the petitioner, or in the industry at large. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. In fact, the overview of duties suggests that the beneficiary occupies a sales position, and the petitioner provides no additional information as to why other similarly trained or qualified individuals could not perform the same duties. Despite counsel's explanation on appeal that claims the petitioner's business holds a specialized niche in the boating market, there is insufficient evidence to conclude that this factor alone attributes the beneficiary with specialized knowledge. The record contains no definitive

evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field.

While personally educating himself in all aspects of the petitioner's yachts and creating a database to store this information is certainly a commendable feat, there is nothing in the record to suggest that the beneficiary's mere familiarity with the goods he is employed to sell attributes him with specialized knowledge. While this system of organization certainly gives the beneficiary an advantage in the business of yacht sales, the fact that the beneficiary has developed a database to categorize all of the petitioner's merchandise does not equate to specialized knowledge under the regulatory definitions.

The petitioner provides no evidence of any training received by the beneficiary, and implies, essentially, that his training was received through his employment abroad. Furthermore, the petitioner fails to specifically clarify how the beneficiary possesses specialized knowledge of a methodology, application or process of the petitioner merely by being familiar with the petitioner's line of products. There is no indication in the record that a similarly-trained person, with a degree in Engineering and twenty-two months of experience with the petitioner, could not perform the same duties. The petitioner provides no evidence of specific training or instruction received by the petitioner in methodologies exclusive to the petitioner in his employment abroad. Instead, it appears that the petitioner is basing its claim that the beneficiary in fact possesses specialized knowledge on the fact that he is one of a select few salespersons working in the luxury boating industry. Regardless, the fact remains that the record does not demonstrate that the beneficiary possesses specialized knowledge of any process or methodology used and implemented by the petitioner. While his extensive familiarity with the petitioner's luxury products certainly makes him a valuable asset to the company, there is nothing to suggest that the beneficiary acquired specialized knowledge of any methodologies or procedures in the twenty-two months he has worked for the petitioner. There is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something unique to the petitioner which other similarly-trained persons could not have gained from working in the industry in general.[1]

In this case, the petitioner and counsel rely on the AAO to accept its uncorroborated assertions that the beneficiary possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. 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)).

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)).[2] As stated by the Commissioner in

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[1] It is further noted that, in order for the beneficiary to have been employed for at least one year abroad in a specialized knowledge capacity, he would have had to have gained the claimed specialized knowledge within ten months, not twenty-two months.

[2] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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 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

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 firm's operation.

Id. at 53.

In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of an educated and/or skilled worker. Moreover, the petitioner's failure to submit an overview of the beneficiary's training or the nature in which he acquired specialized skills that set him apart from others creates a presumption of ineligibility. What remains unclear is why the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that he apparently has received no formal training and gained his knowledge merely by creating a database and studying in detail the amenities and specifications of the petitioner's yachts. It is not unreasonable, therefore, to conclude that other similarly trained persons in the area of yacht sales have also taken similar steps to familiarize themselves with the market in which they work. Again, since the petitioner has failed to demonstrate a specific methodology or process unique to the petitioner of which the beneficiary has obtained specialized knowledge, it is reasonable to conclude that other similarly trained persons could achieve the same level of knowledge as the beneficiary by simply working as a sales engineer in the industry for ten months.

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

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

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.

On appeal, counsel for the petitioner refers to memoranda by [redacted] and [redacted] and claims that the beneficiary's knowledge contributes to the petitioner's competitiveness, is not generally found throughout the industry, and could only be gained through employment with the petitioner. The AAO disagrees. As discussed above, the petitioner believes the beneficiary's knowledge is specialized due to the fact that there are only a small number of companies that manufacture and sell large open yachts. The petitioner, however, fails to consider the business sector in which the petitioner is involved. For example, based on the petitioner's own statements it is apparent that the petitioner has competition in the industry and that its competitors also employ sales engineers who devote their time exclusively to large custom open yachts. It stands to reason that the petitioner's competitors also employ other sales engineers who are likewise familiar with the sector and the specifications of the yachts, including the Leopold and Mangusta. The petitioner overlooks a critical factor here: specifically, what specific knowledge did the beneficiary gain by working with the *petitioner* for ten months that renders his knowledge so advanced that only a select few in the industry can perform his duties? The petitioner has failed to provide an adequate response to this question.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other sales engineers in the field is its assertion that the beneficiary's experience and knowledge of its high-end merchandise, luxury goods marketed by a select number of companies, is not possessed by anyone else in the industry. While the beneficiary's knowledge of specific clients and their preferences, as well as specific yacht models available for sale by the petitioner, may be unique to him, the fact remains that this is a general requirement of any sales engineer devoted solely to one sector in the industry.[3] Again, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary as compared to the daily duties of other sales engineers working in the sector. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other persons with ten months of experience in the industry and a degree in engineering. Moreover, there is no independent evidence corroborating the claims of the petitioner. This lack of tangible evidence makes it impossible to classify the beneficiary's knowledge of the petitioner's business products and procedures as special or advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation that the alleged on-the-job experience he received within ten months made him an expert in a product or procedure of the petitioner. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of

[3] The AAO notes that while the beneficiary's knowledge of specific clients and their preferences is certainly an asset to the foreign entity and enhances its customer service to certain sector of the industry, there is no claim in the record that this unique knowledge possessed by the beneficiary will be used in the United States. For example, the petitioner's letter dated November 30, 2005 indicates that the main duties of the beneficiary while in the United States include "identifying new clients," "maximizing customer potential in designated regions," and "establishing new long-term rapports with customers." Therefore, even if the beneficiary's knowledge of specific client preferences was found to be specialized, the fact remains that in the United States, the beneficiary would be developing new client relationships and thus would have to learn the preferences of his clients in the same way as that of any other similarly-trained salesperson for the foreign entity, the petitioner, or in the industry at large.

specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the petitioner 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). Mere familiarity with the sector in general does not constitute specialized knowledge for purposes of this matter. As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, was not employed abroad in a specialized knowledge capacity, and would not be employed in the United States in a capacity requiring specialized knowledge. For these reasons, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.