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U.S. Citizenship and Immigration Services

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[redacted]

File: SRC 06 022 52502 Office: TEXAS SERVICE CENTER Date: MAR 27 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)

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of senior design engineer 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 Delaware corporation, states that it designs, manufactures and services sophisticated machinery and systems. The petitioner states that it is the parent company of the beneficiary's foreign employer, FMC Technologies Singapore Pte. Ltd., located in Singapore. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered to the beneficiary requires an employee with specialized knowledge, or that the beneficiary possesses such knowledge.

On appeal, counsel for the petitioner disputes the director's decision and outlines the beneficiary's experience and specific specialized knowledge in the petitioner's products. Counsel concludes that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures and therefore qualifies for the benefit sought. Counsel submits a brief in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 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:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The nonimmigrant petition was filed on October 28, 2005. In a letter dated October 25, 2005, the petitioner stated that the beneficiary has worked for the foreign company since April 2004. Initially he was employed in the position of Senior Product Design Engineer in the Surface Division, and was transferred in 2005 to the Subsea Division. The petitioner provided the following description of the duties the beneficiary performed for the foreign company:

- Creates, review and approves designs, drawings, DBI's (database information), specifications, etc. of existing or new technology or applications. Ensures that assignments meet standards and performance requirements within area of expertise.
- Uses the CAD/CAM and database systems and facilitates to make layouts, analyze designs, evaluate equipment systems and generate new equipment designs.
- Prepares documentation, information and communications such as ECN (Engineering Change Notices), DBI (Data Base Information) and engineering specifications and ensures conformance to all policies and procedures related to engineering functions, labor reporting and system reporting.
- Develop solutions to non recurring problem by analyzing, interpreting and evaluating various precedence data. Anticipates potential problem and take preventive actions.
- Consult with other department on equipment design and questions. Identify root cause of problem. Develop alternative solutions and communicate associated benefit and risk.
- Prepares technical data and papers for sales personnel, customers and publications. Makes field trips with sales and service personnel with new products and technical applications.

- Take ownership of engineering tests. Prepares test reports and closure reports on engineering project assignments.
- Assists and checks the work of drafters, designers and less experienced engineers.
- Participates in planning and scheduling projects.
- Accepts ownership of conceptual design.
- Participates in product and standardization project.
- Attends proprietary industry related professional society meetings and functions in order to stay informed of and make good use of new technology, products and personal development opportunities.

In addition, the petitioner submitted a list of projects the beneficiary completed during his tenure with the foreign company. The list is incorporated in the record and will not be repeated herein.

The petitioner also explained that the beneficiary will continue to perform several of the duties the beneficiary performed with the foreign company. In addition, the petitioner provided the following description of the company's products and the beneficiary's proposed position as a senior design engineer in the United States:

> His main duties will be to apply expert product knowledge and seasoned experience to broader scope and more complex problems and projects; establishing design requirements, conceptualizing, planning and executing designs.
>
> He will use the multiple technologies learned while completing the various Surface and Subsea projects to supervise and execute the engineering aspects of the installation of Enhanced Horizontal Subsea Trees. [The petitioner's] EHXT product line comes in two pressure ratings of 10,000 and 15,000 psi, which are both rated for use in subsea wells up to 10,000 feet of water depth. The most significant enhancements of the EHXT system are the tubing hanger and tree cap designs. The traditional pressure-containing internal tree cap has been eliminated, and its pressure containing barriers have been moved to the tubing hangar. This enables the tree cap to be installed by ROV off the drilling rig's critical path, after the BOP has been disconnected from the tree. The result is the most cost-effective and reliable horizontal completion system available in the industry today. The projects [the beneficiary] will work on include the KMG 10K and 15K EXHT's, as well as the Anadarko, Llog and Dominion 10K EHXT's.
>
> In carrying out the tasks for this new position, [the beneficiary] will carry out the following duties and responsibilities:
>
> - All of the same duties listed above for his foreign position
> - Leads one or more professionals and/or technicians on a project basis. Ensures that project members understand business goals and creates energy and action toward these goals.
> - Develops unique solutions for complex technical problems that may include the design of new systems or the development of solutions having few or no precedents.

- Consults with other departments on equipment designs and questions. Anticipates potential problems and proactively solves complex problems through creative thinking, using internal and external resources.
- Assists with the development of new professionals.
- Participates in setting objectives for projects. Defines project schedule.
- Accepts ownership of conceptual designs and regularly sponsors projects to higher management.
- Leads product standardization projects.
- Write and delivers technical papers for publication.

On November 9, 2005, the director issued a notice requesting additional evidence in order to establish that the beneficiary has specialized knowledge. The director stated that the petitioner must provide evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners, and that the beneficiary's knowledge is different from the elementary or basic knowledge possessed by others within the company. Specifically, the director requested: (1) evidence relating to the unique methodologies, tools, programs, and/or application that the company utilizes, and an explanation as to how these are different from the methodologies, tools and/or applications utilized by other companies in the industry; (2) a record from the human resources department detailing the manner in which the beneficiary has gained his specialized knowledge, which should indicate the pertinent training courses the beneficiary completed when working with the foreign company, including the duration of the course, the number of hours spent taking the courses each day, and certificates of completion of these courses; (3) a description of the minimum amount of time required to train an employee to fill the proffered position; (4) information as to how many workers are similarly employed by the organization, and out of these employees information as to who received the same training received by the beneficiary; and (5) an explanation how the beneficiary was employed by the foreign company for one continuous year in a specialized position when the beneficiary was hired in April 2004, eighteen months prior to filing the instant petition.

In response, counsel for the petitioner submitted a letter dated December 21, 2005, responding to the director's request. In response to the director's request for evidence relating to the unique methodologies, tools, programs, and/or application that the company utilizes, and an explanation as to how these are different from the methodologies, tools and/or applications utilized by other companies in the industry, counsel for the petitioner explained the petitioner's proprietary products, including the "tree cap running tool," the "hydraulic orientation bushing running tool," "Murphy's kikeh EHXT engineering," "Kodeco 3 in 1 riser connector system," "SINOPEC metal sealing wellhead system," and "HP-HY actuators." The petitioner claims that several of its products are patented and/or differ from similar products available on the market. The petitioner submits documentation explaining the petitioner's products.

Counsel also stated that the beneficiary possesses knowledge which can be gained only through prior experience with the petitioner. Counsel states "in order to be able to do the work at the level of Sr. Design Engineer, the individual must have a strong background of over 8 years working in tree design and at least one year working with [the petitioner's] systems to acquire knowledge of [the petitioner's] systems and procedures." Counsel explained that the beneficiary possesses over 10 years in tree design and over one year with the petitioning company.

In response to the director's request for a record from the human resources department detailing the manner in which the beneficiary has gained his specialized knowledge, which should indicate the pertinent training courses the beneficiary completed when working with the foreign company, the duration of the course, the number of hours spent taking the courses each day, and certificates of completion of these courses, the petitioner submitted the beneficiary's resume, a list of projects completed by him with the foreign company, and a training record spreadsheet for the beneficiary issued by the foreign company.

According to the beneficiary's training record submitted by the petitioner, it appears that the beneficiary completed 12 courses for the foreign company, which required a total of 18 days in order to complete. The petitioner only indicated the days the training courses occurred but did not specify the training hours for each specific date as requested by the director. 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).

In response to the director's request for a description of the minimum amount of time required to train an employee to fill the proffered position, counsel for the petitioner stated that the estimated amount of time is over eight years of engineering of oilfield systems with at least one year working with the petitioner's organization. Counsel explained that the petitioner employs approximately twenty engineers in the position of senior design engineer. In addition, the training required of similarly employed individuals is "estimated to be over 8 years in tree design, with one year with [the petitioner's] systems."

The director also requested an explanation of how the beneficiary was employed by the foreign company for one continuous year in a specialized position when the beneficiary was hired in April 2004, eighteen months prior to filing the instant petition. Counsel for the petitioner states that the beneficiary has gained specialized knowledge while working for the company for over eighteen months "on the design of their proprietary tree systems." Counsel states: "As [the beneficiary] has a Mechanical Engineering Degree and 10 years experience in the tree design field[,] his 6-7 months working with [the petitioner's] systems is adequate to prepare him for the Tree Product Engineering Group." Counsel also states that the regulations do not require the beneficiary to have been employed with the foreign company for one year in a position of specialized capacity, but instead the work experience must only "involve specialized knowledge." Thus, counsel states that the beneficiary may gain his specialized knowledge during the one year of employment abroad.

In the response to the director's request, counsel for the petitioner stated that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in a legacy Immigration and Naturalization Service (INS) memorandum. *See* Memorandum from [redacted] Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994)("Puleo memo"). Specifically, counsel asserts that the beneficiary meets the requirements set forth in the Puleo memo in that he possesses (1) knowledge valuable to the competitiveness in the marketplace; (2) unusual knowledge of foreign operating conditions; (3) experience with significant assignments abroad that were beneficial to the employer; and (4) knowledge that can only be gained with the employer or which can not be easily transferred.

On January 6, 2006, the director denied the petition concluding that the petitioner did not establish that the beneficiary was employed by the foreign company for one continuous year in a specialized capacity. The director noted that the petitioner indicated it takes one year working with the organization in order to obtain the required knowledge of the petitioner's products. Since the beneficiary has been employed for the foreign

company for 18 months, the director stated that the beneficiary was obtaining the specialized knowledge in the first year and was thus only employed in a specialized knowledge position for six months. In addition, the director stated that it does not appear that the claimed knowledge itself is specialized or that the position of senior design engineer requires someone with specialized knowledge, since most of the knowledge required to work with the products may be obtained outside of the company. The director stated that the petitioner's requirement that the beneficiary work at least one year with the company's systems is too ambiguous to constitute specialized knowledge, as this year "could be to impart knowledge that is common within the organization and easily acquired by somebody familiar to the field."

On appeal, counsel for the petitioner argues that the regulations do not state "that the alien must have reached some arbitrary threshold of specialized knowledge prior to commencing the qualifying year of employment abroad or preclude the alien from acquiring during the qualifying year of employment, the specialized knowledge the alien ultimately comes to hold." Counsel suggests that the director's decision "arbitrarily creates a 2-year foreign employment requirement that is not supported by appropriate statutory or regulatory authority." Counsel also asserts that the petitioner submitted sufficient documentation to evidence that the position offered to the beneficiary requires an employee with specialized knowledge, and that the beneficiary possesses such knowledge.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position.

Counsel's assertions are not persuasive. 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), that he was employed by the foreign entity in a position involving specialized knowledge, or that the intended position in the United States.

The AAO acknowledges counsel's assertion that there is no statutory or regulatory requirement that the beneficiary be employed at the specialized knowledge level for at least one full year prior to the filing of a nonimmigrant intracompany transferee petition requesting classification as a specialized knowledge worker. Counsel's assertion is not persuasive.

Section 101(a)(15)(L) of the Act states:

> ...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order *to continue* to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive or involves specialized knowledge.

In order to "continue to" render services in a capacity that is managerial, executive, or involves, specialized knowledge, it is necessary for the beneficiary to have been employed in one of these qualifying capacities during his or her employment abroad. Contrary to counsel's contentions, the evidentiary requirements for the

filing of an L-1 petition, as set forth by the regulations at 8 C.F.R. § 214.2(l)(3)(iv), further confirm the petitioner's burden to establish that the beneficiary was employed in a qualifying capacity. Specifically, the petitioner is required to submit "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."

Therefore, the director's decision was not beyond the scope of the law and regulations as asserted by counsel. The petitioner clearly and repeatedly stated that in order to fill the position of senior design engineer, the employee must have "at least one year working with [the petitioner's] systems to acquire knowledge of [the petitioner's] systems and procedures." Based on the petitioner's representations, the beneficiary, who joined the foreign entity in April 2004, would have reached a minimum level of competence in his position approximately six months before the petition was filed. Accordingly, the director reasonably concluded that the beneficiary's previous eighteen months of employment did not involve one full year of employment which would be considered to be at the level of a "specialized knowledge" employee. Even if the beneficiary's period of training could be considered to "involve" specialized knowledge, as discussed further below, the L-1B visa classification was not intended for employees who are minimally qualified to perform their stated duties.

The AAO also acknowledges counsel's argument that the director's decision creates a requirement that the beneficiary have been employed for more than one year. It must be noted that the regulations require evidence that the qualifying year of employment be in a managerial or executive capacity, or in a capacity requiring specialized knowledge. Therefore, if some portion of the beneficiary's foreign employment is not in a qualifying capacity, an employee who has been employed with a qualifying entity for many years may not meet this eligibility requirement. A determination as to whether a beneficiary was employed *in a qualifying capacity* for the requisite one-year period must necessarily be made on a case-by-case basis. In this case, the petitioner's stated one-year training requirement for the type of position offered effectively made it impossible to find that the beneficiary, after eighteen months of employment, could have been employed in a position involving specialized knowledge for one full year. To the extent that a requirement that the beneficiary be employed for more than one year was imposed, the petitioner's statements regarding the minimum requirements for the beneficiary's position imposed it.

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 job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Based upon the vague job description of the proposed duties and lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to senior engineering positions within the U.S. company are different from those applied for other companies providing tree design services. As noted above, the petitioner asserts that that its products are unique and the petitioner submitted documentation explaining each product and how it differs from similar products in the industry. However, the petitioner also states that the minimum qualifications in order to fill the position of senior design engineer includes at least eight years of professional

experience with tree design and one year working with the petitioner. Thus, most of the experience required in order to fill the position of senior design engineer may be obtained at another company in the same field. It appears that the industry as a whole, including the petitioner, utilizes the same or at least similar machinery and products. The petitioner has not explained how the petitioner's design process differs from the design process of other companies in the industry. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. In response to the director's request for evidence, the petitioner submitted a list of the training courses completed by the beneficiary while employed with the petitioner. It appears that the beneficiary completed 12 courses in the span of 18 days. Thus, the beneficiary received a total of 18 days of training courses during his employment with the foreign company. In addition, the beneficiary's resume indicates that he began working on projects with the petitioner's products and machinery as soon as he began his employment with the petitioner, which undermines the claim that the beneficiary obtained a specialized knowledge of the petitioner's products, or that such knowledge is required to perform the duties of a senior design engineer.

Further, the petitioner claims to have 9000 employees worldwide, and states that only 20 are senior design engineers. With a company of 9000 employees and a gross income of $2.76 billion, this raises questions as to how only a few of the petitioner's employees are trained to fill the position of senior design engineer when the company's main service is providing the products and machinery that need to be designed, customized and maintained by a senior design engineer. 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).

Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired specialized knowledge as defined in the statute and regulations.

The AAO does not dispute the likelihood that the beneficiary is a senior design engineer who understands the petitioner's products and technology and is able to apply it within the context of the petitioner's specific environment. 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)).[1] As stated by the

[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 interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying

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. at 52. 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.

Further, 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. at 15. 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. 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

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[*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 remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

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.")

The record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other senior design engineers. The petitioner has not established that the beneficiary has received extensive training or has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have "advanced" knowledge of the company's business processes, procedures and methodologies, as well as "specialized knowledge" in the products created by and utilized by the company. However, as the petitioner has failed to document any specific training other than eighteen days of courses, or otherwise describe or document the purported knowledge, these claims are not persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without this information, the AAO has no basis to compare the beneficiary's knowledge to that of other workers within the company, and therefore it cannot be concluded that his knowledge is "advanced." There is no indication that the beneficiary has any knowledge that exceeds that of any experienced senior design engineer, or that he has received special training in the company's methodologies or processes which would separate him from any other similarly employer worker within the petitioner's international group. However, notwithstanding the lack of documentation, the petitioner failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

The petitioner noted that the beneficiary obtained his specialized knowledge by working with the foreign company for eighteen months, and that the position he fills requires one year of experience. If the AAO were to follow the petitioner's reasoning, then any employee who had worked as a senior design engineer with the parent company for more than one year possesses specialized knowledge. Since the beneficiary has been employed by the foreign entity for 18 months, it is reasonable to assume that he possesses a level of knowledge of the company's technologies, processes and procedures equivalent to any other senior engineer

employed by the company in a similar position for a similar length of time, and less advanced than many employees who have been employed by the company for a longer time. Although knowledge need not be narrowly held within the organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all senior design engineers with one year of experience in the petitioner's organization are deemed to have "special" or "advanced" knowledge, then that knowledge could not be considered uncommon or out of the ordinary. However, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee status. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

The AAO does not dispute that the petitioner's organization has its own internal systems, processes and methodologies. However, there is no evidence in the record to establish that the beneficiary's knowledge of these systems processes and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the claimed "advanced knowledge." The petitioner has not submitted sufficient documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures and methodologies would differentiate him from any other similarly employed senior design engineer within the petitioner's group or within the petitioner's industry. 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.

Counsel's reliance on the Puleo memorandum is misplaced. It is noted that the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statue or the regulations. Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge intracompany transferee. While the factors discussed in the memorandum may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's processes and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques or management. 8 C.F.R. § 214.2(l)(ii)(D). As discussed above, the petitioner has not established that the beneficiary's knowledge rises to the level of specialized knowledge contemplated by the regulations.

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.

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.