

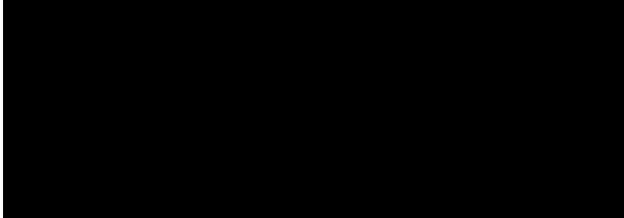
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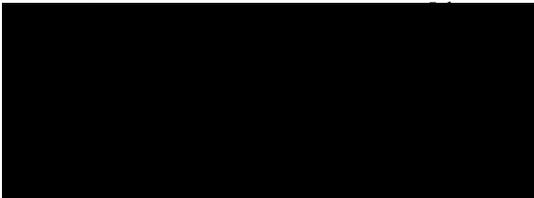
Date: APR 04 2005

IN RE: Petitioner:
Beneficiary



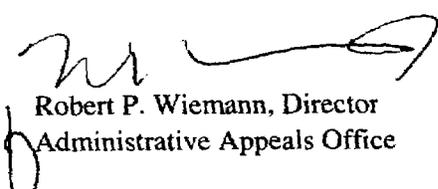
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the Commonwealth of Puerto Rico and is engaged in the restaurant business. The petitioner claims that it is the subsidiary of [REDACTED] located in Cancun, Mexico.¹ The petitioner seeks to employ the beneficiary for three years as a cashiers manager.

The director denied the petition concluding that the petitioner did not establish that the position offered to the beneficiary requires the services of an individual possessing specialized knowledge, nor did it establish that the beneficiary possesses specialized knowledge.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel asserts that the director failed to note that the training the beneficiary received in the company's management protocols and systems is only available within the foreign entity, and, therefore, the beneficiary's knowledge of such systems should be considered "specialized knowledge" under the statutory definition of the term. Counsel further contends that the beneficiary's knowledge of the company's management protocols and systems is different from that generally found in the restaurant industry, and that the beneficiary possesses an advanced level of knowledge of such systems. In support of these assertions, counsel submits a brief and photocopies of previously submitted evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (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.

¹ The AAO notes, based on the evidence submitted, the petitioner is an affiliate, not a subsidiary, of the beneficiary's foreign employer.

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

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

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

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

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

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

In an August 8, 2003 letter submitted with the initial petition, the petitioner described the beneficiary's proposed duties as a cashiers manager with the United States entity as follows:

[The beneficiary] will have overall responsibilities for the supervision and training of the workers concerned in the cash register department. He will train and supervise the personnel within the cash register department, based on his specific knowledge of the particular methods utilized by [REDACTED] worldwide. Specifically, [the beneficiary] will be responsible of supervising and training the workers in the "Andersoft" and "Infocaja" systems developed by the [REDACTED] Group. Supervision of the monthly reports of the restaurant is also under the incumbent responsibilities. Additional duties and responsibilities are: Supervision and coordination of activities of workers engaged in receiving cash or credit card payment for services and keep records of funds received in the restaurant. Search records to assist subordinates in locating and reconciling posting errors. Allocates operating funds to cashiering stations. He will inspect working progress to ensure that the work conforms to specifications under [REDACTED] protocols.

The petitioner further provided the following explanation regarding the beneficiary's claimed specialized knowledge:

The key to [REDACTED] worldwide success is the development and implementation of unique, highly specialized operational protocols. The scope and variety of entertainment programs is specifically designed to support a particular [REDACTED] component or system. [REDACTED] programs and protocols are therefore the result of significant internal corporate development, and this development, as well as the protocols themselves[,] are proprietary to [REDACTED]. While other companies have protocols, none have the unique combination and emphasis that has resulted from years of concentrated efforts in this field by [REDACTED].

The petitioner further noted that the beneficiary had eighteen years of experience with the its corporate group in Mexico, where he had served as a cashier and cashiers supervisor within two different restaurants, and, since 1999, had served as cashiers training manager at the foreign entity's headquarters. In a letter dated August 8, 2003, a representative of the beneficiary's foreign employer described his current position as follows:

[H]is duties are: in charge of the training of future cashiers for all the restaurants of [REDACTED] under the norms and procedures of the corporation. Specifically, he trains the workers in the use of the "Andersof" and "infocaja" systems developed by Grupo [REDACTED]. These systems are the ones used in all the chain's restaurants, and are the ones that control the sales of the restaurants and bars of the chain. Also, he supervises the cash register's monthly reports of the restaurants.

The director found the information submitted insufficient to establish that the beneficiary has specialized knowledge or that he has been and will be employed in a specialized knowledge capacity. Accordingly, on September 9, 2003 the director issued a request for evidence in which he asked the petitioner to provide: (1) an outline of the beneficiary's proposed duties, including an explanation as to how his specialized knowledge will benefit the organization beyond what can be expected of other persons in the same profession; (2) evidence that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but is truly special or advanced; (3) the number of L-1B workers currently employed in the beneficiary's field of endeavor with the United States entity and a brief job description for these employees, if applicable; (4) information regarding the total length of any classroom or on-the-job training courses completed by the beneficiary; and (5) information regarding the minimum amount of time required to train a person to work in the offered position.

In response, the foreign entity submitted a letter dated October 6, 2003 which provided the following more detailed description of the beneficiary's duties:

As Cashiers Manager the duties and responsibilities of [the beneficiary] are the following: will have overall responsibilities for the supervision and training of the workers concerned in the cash register department. He will train and supervise the personnel within the cash

register department, based on his specific knowledge of the particular methods utilized by [REDACTED] worldwide. Specifically [the beneficiary] will be responsible of [sic] supervising and training the workers in the “Andersoft” and “Infocaja” systems developed by the [REDACTED] Group. Supervision of the monthly reports of the restaurant is also under the incumbent’s responsibilities. Additional duties and responsibilities are: Supervision and coordination of activities of workers engaged in receiving cash or credit card payment for services and keep records of funds received in the restaurant. Search records to assist subordinates in locating and reconciling posting errors. Allocates operating funds to cashiering stations. He will inspect working progress to ensure that the work conforms to specifications under [REDACTED] protocols. He will specifically be responsible for the management of the main and bar cash registers, open and close, safe keep the cash and vouchers, in case is necessary to make the corresponding deposit slips to the bank, revision with marker for fake bills, supervision of the delivery of tips to the personnel, verify the veracity of the credit cards, is wrong use by either the personnel or the customer, make paperwork inventory and see to it that is distributed to each and every one of the cash registers. In the event of hiring cashiers, he will make the pertinent interviews, conduct ability tests, the performance evaluations, he will also conduct surveys regarding the working environment, will award the cashiers of the month and cashiers of the year. He will be responsible for the constant actualization in the programs of [REDACTED]. [The beneficiary] will have to perform honorably his job as a employee who has the absolute trust of the General Manager and revise constantly the performance of the cashiers, as well as make sure that there is no breach of confidence or trust.

The foreign entity’s representative further explained that the training of its managerial and executive personnel takes place at “Universidad [REDACTED]” located within the company’s headquarters in Mexico. In the case of a cashiers manager position, the candidate is required to successfully complete a total of seven courses including Administration (56 hours), Cash Register 1 (80 hours), Cash Register 2 (80 hours), Human Resources (56 hours), Anderson’s Operative System (160 hours), Andersoft (80 hours), Andertouch (80 hours) and Infocaja (80 hours). The foreign entity’s representatives noted that Andersoft, Andertouch and Infocaja are software programs designed exclusively for the corporation and that the group “has the exclusive right as well as the patent of these programs, and they are registered with the Secretariat of Intellectual and Industrial Authorship.” The petitioner submitted course completion certificate evidencing the beneficiary’s completion of the above-referenced training. Further, the foreign entity stated:

The capacitation [sic] received by [the beneficiary] is exclusive for the personnel who works [sic] in our corporation being impossible to receive these capacitation [sic] courses outside our installations. The courses are strictly and solely taught by authorized personnel of Universidad [REDACTED] and [REDACTED]. Therefore the knowledge that [the beneficiary] possesses, as well as the one possessed by our executive and managerial personnel, is in no way a generalized knowledge that may be obtained through the industry.

* * *

As Training Manager of Cashiers [the beneficiary] has collaborated with us in the opening of our restaurants . . . in the cities of Panama, Panama, and Lima, Peru. Due to the specialized knowledge of [the beneficiary], these restaurants are highly successful in those countries. This is the level of success that we want to reach in Puerto Rico, and the best candidate to make it happen is [the beneficiary], not only because his specialized knowledge, but because through the years he has demonstrated that we can count on him for the good operation of our business.

The foreign entity's representative noted that two other L-1B workers are currently employed by the petitioner, as its entertainment manager and manager of marketing and promotions. Finally, the foreign entity's representative stated that the beneficiary's successful completion of assignments within the group "will most surely enhance the productivity, competitiveness, image and financial position of [the petitioner.]"

On November 3, 2003, the director denied the petition concluding that the petitioner had not established that the beneficiary possesses specialized knowledge, or that the position being offered requires the services of an individual possessing specialized knowledge. The director noted that the beneficiary's proposed duties do not differ significantly from those of any cashiers manager employed in any restaurant. The director observed that the training received by beneficiary was not intense, lengthy, or significantly different than courses available at any university or college around the world. The director also noted that the petitioner did not demonstrate how knowledge gained in the training courses constitutes "specialized knowledge." Finally, the director noted that an in-depth knowledge of the organization's functions and systems was not unusual for a management-level employee to possess and therefore was not indicative of the beneficiary's claimed advanced expertise.

On appeal, counsel submits a detailed brief in support of the petitioner's assertions that the beneficiary possesses specialized knowledge. Counsel asserts that the director failed to consider that the training the beneficiary received in the company's management protocols and systems is only available to employees of the petitioner's group, and that all professional and managerial personnel within the group's 130 restaurants must complete this training. Counsel further asserts that the fact the beneficiary completed this training and has previously successfully participated in restaurant openings is sufficient to establish his possession of specialized knowledge within the statutory definition. Counsel concedes that some of the beneficiary's proposed duties are identical to those performed by any cashier manager in any restaurant, but asserts:

[T]he Center Director failed to recognize that the duties related to "training and supervision of the personnel within the cash register department, based on his specific knowledge of the particular methods utilized by [REDACTED] worldwide" and "[s]pecifically, [the beneficiary] will be responsible of [sic] supervising and training the workers in the "Andersoft" and "Infocaja" systems developed by the [REDACTED] Group" are not performed by cashier's managers in any other restaurant. These numbered duties go directly to the special knowledge of the petitioning organization's product, service, techniques, management and other interests that is the principal characteristic of the L-1B intra-company transferee classification.

Counsel also disputes the director's statement that the courses described in the supporting documentation are not unlike those taught at any university or college in the United States or around the world. Counsel states that the courses can only be taken at the foreign company's headquarters in Cancun, Mexico. Therefore, "although any person that may wish to labor at one of the establishment[s] of ██████████ in a professional or managerial capacity could take this [sic] courses, these courses are offered exclusively at ██████████ University." Counsel notes that training in Andersoft, Andertouch, Infocaja and the ██████████ Anderson's Operative System is not available at any other institution in the world.

Finally, counsel disputes the director's conclusion that the beneficiary does not qualify for the benefit sought based on the fact that in-depth knowledge of the company's functions and systems is not unusual for the company's management to possess, and thus does not support a finding that the beneficiary possesses advanced expertise. Counsel states that while all of its managerial and executive personnel receive the training the beneficiary received, the number of such personnel is few compared to the number of regular employees within the organization. Counsel further states that the petitioner's restaurant employs 106 individuals and "only [the beneficiary] has the special knowledge to guide the business to success." Counsel submits that the beneficiary's knowledge is special because the management processes and software he uses are different from those generally found in the industry, and because he currently trains cashier managers in these processes and software, his special knowledge is noteworthy. Counsel concludes by citing a December 20, 2002 Citizenship and Immigration Services (CIS) memorandum regarding the interpretation of specialized knowledge, which states that knowledge does not need to be narrowly held throughout the company in order to be considered advanced.

On review, the record does not contain sufficient evidence to establish 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), nor that the intended position requires an employee with specialized knowledge.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO

(Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53. 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 produce or create a specialized product or service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. The beneficiary completed seven short internal training courses that are available to and have undoubtedly been completed by many of the company's employees. There is no evidence that he has any specialized training or skills beyond the minimum requirements for the position. Further, the petitioner has submitted no evidence to establish its claim that the beneficiary possesses "advanced" knowledge of the company's processes and procedures, such that it can be set apart from the elementary knowledge possessed by others who have completed the same training courses.

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 that employee and the remainder of the petitioner's workforce.

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

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

hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, *id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In the instant matter, the petitioner submitted a thorough description of the beneficiary's employment in the foreign entity and his intended employment in the United States entity. However, the petitioner has not documented that the job duties to be performed require specialized knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D). As noted by the director, and as conceded by counsel, the majority of the beneficiary's duties are typical of any employee who supervises cashiers in a large restaurant. Counsel and the petitioner assert that the director overlooked that the beneficiary will train the restaurant's "cash register department" in the Andersoft and Infocaja systems developed by the petitioner's corporate group. However, the record shows that the petitioner's restaurant was open and fully operational since at least April 2003, with 106 employees at the time of filing. The also record shows that at the time of filing, the beneficiary had been in the United States for a period of over four months in B-1 status. According to an annotation on his visa, he was admitted specifically to conduct employee training at the petitioner's establishment. The petitioner did not provide a description of the training to be delivered to the restaurant's cashiers by the beneficiary. However, considering that the beneficiary had already had over four months to train the restaurant's cashiers in the use of the restaurant's cash registers and internal software systems, the AAO is not persuaded that training cashiers would be a critical component of the duties to be performed under an approved petition. Therefore, the AAO concurs with the director that the proposed position would be essentially the same as any other cashier supervisor position in any other restaurant. Although counsel states "please notice that in the establishment in Puerto Rico, there are 106 employees, and only [the beneficiary] has the special knowledge to guide the business to success," there is no supporting documentary evidence to substantiate this assertion. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Furthermore, the petitioner clearly stated that all candidates must complete the series of seven training courses outlined above before assuming the duties described in the job description for cashiers manager. The petitioner also states that the beneficiary has served in the position of cashiers training manager since March 1999. Since the petitioner asserts that the beneficiary currently trains cashiers managers, the AAO assumes that the training requirements would be the same for the beneficiary's current position. The beneficiary did not complete any of the claimed required training prior to assuming his position in Mexico as cashiers training manager. A review of his course completion certificates reveals that he completed two courses in October 1999, two courses in 2000, two courses in 2001, and two courses in 2002. The petitioner stated "[a]ll of these courses, with no exceptions, must be approved by the candidate to the position of Cashiers Manager." The fact that the beneficiary has served as the corporate group's cashier training manager for over three years before completing the training program for the position himself raises doubts regarding the stated job requirements for the proposed position in the United States. 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 petitioner has not established that the position offered to the beneficiary requires specialized knowledge as defined in the regulations.

Furthermore, even if the duties to be performed by the beneficiary did require someone who possesses knowledge of the company's management protocols and systems, the petitioner has not established that such knowledge is truly noteworthy or uncommon. The AAO recognizes that the specific training courses that the beneficiary completed are only available within the petitioner's in-house "university" and accepts that three of the courses involve instruction in the use of proprietary software systems, specifically, Andertouch, Andersoft and Infocaja. The petitioner claims that the beneficiary's specialized knowledge is based upon his completion of this training in proprietary systems available exclusively at the foreign entity's Mexican facility. The length of time it takes to complete the above referenced courses totals only 240 hours, or six weeks. The petitioner concedes that all managers and executive within the organization complete these courses but states that the number of managers and executives is small, compared to the total number of employees in the petitioner's group worldwide, such that such the knowledge can be considered unusual or noteworthy. However, the petitioner also concedes that "any person that may wish to labor at one of the establishment[s] . . . [REDACTED] in a professional or managerial capacity could take [these] courses." Finally, while the petitioner has established that the systems it uses were created specifically for use in its restaurants, it has not claimed that its systems are significantly different from those used in other organizations operating major chain restaurants.

The information provided above allows the AAO to compare the beneficiary to other cashier managers within the industry and within the petitioner's corporate group. Compared to other cashier managers in the industry, the beneficiary possesses perhaps two months of training, which is not offered within any other restaurant chain. The petitioner has submitted no evidence to suggest that its systems, although proprietary, are significantly different from those used by other large chain restaurants. Compared to other employees within the petitioner's corporate group, the beneficiary has the same training available to and received by all of the current professional, managerial and executive personnel of the organization, and available to anyone who successfully applies for a professional or managerial position at any of the company's restaurants. The petitioner's group operates 130 restaurants, so the number of people who have received the same training is

likely one thousand or more. Based on the petitioner's statements and the evidence presented, the AAO cannot conclude that the beneficiary qualifies as "key personnel" within the petitioner's family of companies based on his training and previous assignments. See *Matter of Penner*, 18 I&N Dec. at 53. Likewise, there is insufficient evidence to distinguish his knowledge from that generally found in the petitioner's industry, such that it would be difficult to impart to another individual.

Counsel correctly states that the beneficiary's knowledge need not be narrowly held throughout the company so long as the petitioner establishes that his knowledge of the company processes and procedures is advanced. See Memorandum of Fujie O. Ohata, Associate Commissioner, Service Center Operations, *Interpretation of Specialized Knowledge*, HQ`SCOPS 70/6.1 (December 20, 2002). Counsel states that the beneficiary's knowledge of the company's systems and processes can be considered advanced compared to other employees within the organization because the beneficiary is currently responsible for training cashiers managers in those systems. Counsel provides no evidence or further explanation regarding the claimed "advanced" knowledge. Again, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Further, the AAO notes inconsistencies with respect to the job description for the beneficiary's current description. The petitioner stated on Form I-129 and the foreign entity claims in its August 8, 2003 letter that as "Cashiers Training Manager" the beneficiary trains all future cashiers for all of the restaurants in the corporate group. The petitioner's supporting letter states that he is responsible for training future managers of the group's new restaurants. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given the conflicting evidence regarding the beneficiary's current duties, the AAO cannot determine the beneficiary's level of responsibility and thus cannot conclude that his knowledge of the company's processes and procedures is "advanced." See Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B).

Finally, counsel states the petitioner's group has previously utilized the beneficiary's services and expertise in the openings of two restaurants in Panama and Peru and provides copies of certificates awarded to the beneficiary for his "valuable contribution in the openings" of the establishments. No further description of his role within these projects was provided. This evidence is therefore insufficient to establish that the beneficiary's knowledge is so prominent and valuable that he qualifies as "key personnel" within the petitioner's corporate group. See *Matter of Penner*, 18 I&N Dec. at 53.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes and their application in international markets is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job duties for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel," nor does it establish employment in a specialized knowledge capacity.

The legislative history for the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For this reason, the appeal will be dismissed.

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. Accordingly, the director’s decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.