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File: WAC 05 031 50688 Office: CALIFORNIA SERVICE CENTER Date: **AUG 26 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

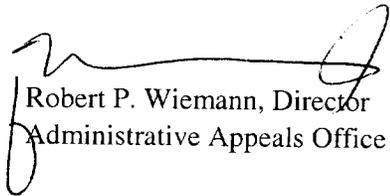
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. 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 § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California corporation that provides various Internet-based information technology services. The petitioner claims to be an affiliate of the beneficiary's foreign employer, Cirland Corp., located in Tokyo, Japan. The petitioner seeks to employ the beneficiary as its vice president of international operations for a one-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a capacity involving 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. Counsel asserts that the director's decision was based on an improper understanding of the law and failed to consider all of the relevant evidence submitted. Counsel also emphasizes that certain findings by the director in the instant matter are contrary to a June 21, 2004 decision issued by the director for an L-1A nonimmigrant intracompany transferee petition filed on behalf of the beneficiary by this petitioner.¹ Counsel states that the director's decision is "in conflict" with two district court decisions and a 1988 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) policy memorandum.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (I)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

¹ The director's decision in the matter of the beneficiary's L-1A nonimmigrant visa petition is also before the AAO on appeal and has been addressed in a separate decision. *See* WAC 04 154 50197. The AAO dismissed the appeal.

- (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.

The issue in this proceeding is whether the beneficiary will be employed by the United States entity in a specialized knowledge capacity.

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.

The petition was submitted on November 12, 2004. In an appended letter dated November 11, 2004, the petitioner asserted that the beneficiary was employed with the petitioner's affiliate in "executive/managerial employment" and provided a description of his duties in his role as president and chief executive officer of the foreign company. The petitioner described the beneficiary's proposed duties as vice president for international operations in the United States as follows:

[The beneficiary] will launch the company's operations in the Asia/Pacific region including Japan. He will direct a corps of personnel who will ultimately take over the day-to-day operations of the company for international operations.

He will manage and direct the international operations of the corporation; establish the company's international procedures guidelines and oversee their initial implementation; and devise marketing strategies and establish a network of corporate clients. He will make all executive decisions regarding new contracts, investments, bank credits, expenditures and advertising. In line with [the petitioner's] corporate culture, the company will engage in diversified ventures, including but not limited to corporate establishment and business

enabling services. [The beneficiary's] involvement is essential in directing this critical phase of our international operations.

The petitioner further explained that the beneficiary had recently acquired a 50 percent interest in the U.S. company and since that time, the petitioner has shared with him its "trade secrets, client details and proprietary approaches to project development and client solutions. All of this information is specialized knowledge that is not available outside of [the petitioner]." The petitioner indicated that there was a long-term relationship between the petitioner, the beneficiary and the foreign entity. The petitioner also described a specific project which would require the employment of the beneficiary in a specialized knowledge capacity:

We initially seek [the beneficiary's] immediate employment [on] the Circland Marketplace project, a directed joint venture project towards the development of a virtual on-line auction marketplace web site for Japanese companies to sell their products in the USA. The concept will be to expose successful and new Japanese products to American retailers and consumers for the first time. The project will implement [the petitioner's] proprietary methodology, services and designs for use by Japanese clients.

In addition to the Circland Marketplace, we have identified a group of potent new customers now based in Hawaii that can immediately use our services for the development of information technology based progress for their high-end cosmetic lines. The principals are also from Japan, as we are most concerned that the inability of [the beneficiary] to meet and close a deal for our services will cost [the petitioner] this significant immediate opportunity. While we have prepared for this large client project intensive [sic], the actual project will not be feasible without [the beneficiary's] direct participation.

Finally, the petitioner submitted a list of its specific "trade secrets," as referenced in its letter:

- 1) Needs Assessment – Custom-developed and proprietary questionnaire for use in analyzing our client's needs and formulating a recommendation and proposal.
- 2) CPI e-Business Life Cycle Management – Another proprietary tool, also used in the needs assessment process to identify where a client is and what they need to do next.
- 3) Twenty-two techniques in e-marketing – Also proprietary. Addresses both bringing customers to a web site and "closing" them once they are there.
- 4) CPI e-tracking – Custom-developed and proprietary system for tracking a client's e-marketing campaigns. Records click-throughs, order ratios and profitability.
- 5) CPI Tracking – Custom-developed and proprietary system for managing our client's projects.

On December 21, 2004, the director requested additional evidence in order to establish that the beneficiary has specialized knowledge. The director cited the statutory definition of "specialized knowledge" and provided a list of seven characteristics of an employee who has specialized knowledge. The director instructed the petitioner as follows:

- **Special or Advanced Duties:** Explain how the duties the alien performed abroad and those he or she will perform in the United States are different from those of other workers employed by the petitioner or other U.S. employers in this type of position.
- **Petitioner's Product:** Explain, in more detail, exactly what is the equipment, system, product, technique, or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad.

(Emphasis in original).

In a response dated January 4, 2005, the petitioner explained that the petitioner is seeking to market its services to the Japanese business community and that the petitioner is already in negotiations with Japanese companies through the beneficiary's efforts. The petitioner repeated portions of the job description included in the initial filing, and provided the following additional information in an effort to explain how the beneficiary's duties are "special" or "advanced":

[The petitioner] presently has no other staff member or person who can perform these duties effectively on our behalf. We have attempted to close deals with similar companies in the past without success. With the addition of [the beneficiary] to our team, we can engage in this line of business with confidence. Also, none of our competitors in this industry can provide service to this target client and business source since none of them, to our knowledge, have access to a qualified special knowledge person like [the beneficiary].

As a Director and senior executive Vice President of [the petitioner], [the beneficiary] will have authority to negotiate contracts in excess of \$100,000, and to make acquisitions or sign commitments in excess of \$100,000. He will become the face and identity of [the petitioner] within the Japanese business community both in the USA and in Japan. He will provide instant analysis of company problems or information technology solutions using [the petitioner's] proprietary methodology and our unique marketing materials.

(Emphasis in original.)

With regard to its products, the petitioner explained that it "has been a leader in the field of internet web design, marketing, internet commerce and related applications since 1994" and is a business partner of AT&T and IBM. The petitioner indicated that it has assisted in the establishment, creation and development of leading and award-winning web sites, and provided information from its Internet site regarding its e-Business Development, Project Development, and e-Marketing and Analysis services. The petitioner also noted that its partnerships with AT&T and IBM involve "both proprietary information and client trade classified or trade secret information regarding specific applications, uses and client web sites. Both AT&T and IBM limit the number of vendors which they accept as partners."

In his January 4, 2005 cover letter, counsel references a 1988 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum and a 1987 U.S. District Court decision, *IKEA, Inc. vs. DOJ* ___F. Supp.___, No. 87-2025 (D.D.C. Dec. 23 1987), to support his statement that the beneficiary meets the “customary requirements of holding specialized knowledge” including: (1) knowledge that is valuable to the petitioner’s competitiveness in the marketplace; (2) he is uniquely qualified to contribute to the petitioner’s knowledge of Japanese market conditions and market matters; (3) he is the chief executive of the foreign entity and is positioned to impact the petitioner’s competitiveness, image and financial position; and, (4) he possesses knowledge that can only be gained through past experience with both the petitioner and the foreign entity. See Memorandum from Richard E. Norton, Associate Commissioner for Examinations, Immigration and Naturalization Services, to all Regional Service Center Directors, et al, *Interpretation of Specialized Knowledge Under the L Classification*, CO 214.2L-P (October 27, 1986)(Norton memorandum). The petitioner explains how the beneficiary meets each of these requirements, emphasizing that he is the president of the foreign entity and has personal contacts with a number of major Japanese corporations that will allow him to “open doors” for the petitioner in Japan, providing the petitioner with “immediate access to provide our IT solutions and internet technology to Japanese organizations in the USA subsidiary offices.” The petitioner notes that it has been “locked out” of the Japanese market in the past due to “culture, language and our lack of recognition there.”

On January 18, 2005, the director denied the petition determining that the beneficiary would not be employed in a specialized knowledge capacity for the United States entity. Specifically, the director observed: (1) the evidence of record indicates that the petitioner intends to employ the beneficiary in a managerial or executive capacity; (2) the petitioner did not establish that the beneficiary is required to employ the petitioner’s proprietary processes or methodologies in order to perform his proposed duties; and, (3) the petitioner did not establish that the beneficiary has advanced knowledge of the petitioner’s products, processes or services beyond “simple familiarity,” as he had only been introduced to the petitioner’s claimed proprietary methodologies months before the petition was filed. The director concluded: “Simply relying on the beneficiary’s familiarity with the [foreign] organization, his innate talent, and his potential to contribute to the petitioner’s growth is not sufficient to establish that he possesses specialized knowledge or has been and will be employed in a capacity involving specialized knowledge.”

On appeal, counsel for the petitioner argues that the director’s decision was based on an improper understanding of the law, fails to consider all of the relevant evidence submitted, and therefore constitutes an abuse of discretion. Counsel objects to the director’s finding that the beneficiary’s position does not require the application of the claimed specialized knowledge, stating: “It is illogical and disingenuous to conclude that someone who may direct and manage operations involving complex, unique and proprietary information and technology would not possess and utilize specialized knowledge....It is fallacious to claim that someone directing the operation will not have special knowledge in that very operation.” Counsel again cites the 1988 Norton memoranda and *IKEA, Inc. vs. DOJ* and states that the beneficiary meets the criteria for specialized knowledge outlined in the referenced sources. Counsel contends that the director failed to address the evidence and apply the law to the facts presented.

In addition, counsel asserts that in finding that the beneficiary will be a manager or executive, rather than a specialized knowledge employee, “the Director has decided the case in direct and legal contradiction of a

prior decision in the exact same case.” Counsel refers to the director’s denial of the beneficiary’s previous L-1A nonimmigrant intracompany transferee petition on the grounds that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. Counsel contends: “The legal concept of collateral estoppel must apply here. The Director cannot ignore the prior decision on the same facts involving the exact same parties, in order to now conclude the opposite findings.”

Counsel’s assertions are not persuasive. The record as presently constituted is not persuasive in demonstrating that the beneficiary would be employed by the U.S. entity in a position requiring specialized knowledge. 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). 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. *See 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 *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

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

Id. at 53.

Here, the beneficiary’s proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. For example, the beneficiary’s responsibilities of establishing the company’s operations in the Asia/Pacific region, managing and directing the international operations, devising marketing strategies, establishing and implementing international procedural guidelines, establishing a network of

² 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 [*i.e.*, not specifically incorrect] interpretations by INS,” H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

clients, making decisions regarding contracts, investments, bank credits, expenditures and advertising, and researching potential markets are all tasks typically performed by any individual responsible for overseeing a start-up operation in a new market. The record is devoid of any documentary evidence that the beneficiary's proposed position would involve the application of special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. Counsel's blanket assertion that "someone who directs and manages a service that must encompass specialized knowledge, has a position that requires such specialized knowledge for execution" is not supported by evidence in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges that it is possible for an individual employed in a managerial role to meet the criteria for specialized knowledge capacity set forth at section 214(c)(2)(B). However, the petitioner has not established that the particular position offered to the beneficiary requires an individual with knowledge, experience or characteristics beyond possession of excellent business sense, outstanding marketing and sales skills, a network of existing business contacts in Japan, and knowledge of the Japanese language and culture. Counsel confirms that the beneficiary "isn't needed to create information technology, write code or to analyze a users needs or problems," but, rather, is needed to manage, direct, sell and market the petitioner's services. Again, there is no evidence that he would rely on "special" or "advanced" knowledge of the petitioner's products or processes in order to perform these duties. The beneficiary's claimed specialized knowledge must relate specifically to the petitioning company.

Although the petitioner claims that the beneficiary possesses and would utilize knowledge of the petitioner's processes and methodologies, it has failed to specifically describe how he would utilize this knowledge, or adequately explain how the beneficiary gained his claimed specialized knowledge, other than vaguely noting that the petitioner "shared" its trade secrets with the beneficiary when he purchased a 50 percent interest in the petitioning company approximately seven months before this petition was filed. 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)). There is no evidence that the beneficiary has ever utilized specialized knowledge of the petitioner's processes in the performance of his job duties with the foreign entity or that his knowledge extends beyond that of mere familiarity that could easily be transferred to another individual with a similar professional background.

It is further noted that the beneficiary could not have gained the requisite specialized knowledge of the petitioner's processes and methodologies while employed with the foreign entity because the two companies had no common ownership and control, and no documented business relationship, prior to the beneficiary's purchase of stock in the petitioning company in March 2004. Based on the limited information available regarding the Japanese company, it appears to be engaged in the design, development and manufacturing of air purification appliances, while the petitioner specializes in web design, e-marketing, internet commerce and related e-business services. Although the petitioner claims that the beneficiary once "consulted" on a common project with the petitioner wherein he was introduced to its proprietary methodology, products and

services, this project and the beneficiary's role within it have not been adequately defined. Again, 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. Even if the petitioner had established that the U.S. position requires an individual with specialized knowledge, the petitioner has not established that the beneficiary's education, training, or experience has equipped him with "special" or "advanced" knowledge of the petitioner's products, services, processes, or methodologies. See 8 C.F.R. § 214.2(I)(3)(iv).

Additionally, the petitioner has not submitted any evidence of the knowledge and expertise required for the proffered position that would differentiate the beneficiary from other managers employed within the petitioner's group or working for other employers within the jewelry industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. 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 term "specialized knowledge" is relative and cannot be plainly defined. 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 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.

The petitioner attempts to differentiate the beneficiary's knowledge as special or advanced by claiming that the petitioner "has no other staff member or person" who can market its services and negotiate contracts with Japanese companies, and that to the best of its knowledge, none of its competitors are able to provide services to the Japanese business community. However, this claim is evidently based on the fact that the beneficiary is a successful Japanese businessman with knowledge of the Japanese language and culture, and a network of business associates in the market where the petitioner wishes to target its new international operations. The AAO does not disagree with the petitioner's assertion that the beneficiary will be "employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operations." However, the statute and regulations require the petitioner to demonstrate that the beneficiary possesses, and that the proposed employment requires, special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests, or an advanced level of knowledge or expertise in the organization's processes and procedures. The beneficiary's knowledge and expertise, while valuable to the petitioner, does not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations.

Even if the petitioner had established that the beneficiary's position requires specialized knowledge, the petitioner has provided no basis for comparing the beneficiary to other employees within the company. Although the petitioner has not provided evidence of the knowledge, training, and experience possessed by its

other workers, it has not shown that the beneficiary's knowledge could be considered "advanced" based on his limited exposure to the petitioner's processes in the months between his acquisition of an interest in the petitioner in March 2004 and the filing of this petition in November 2004.

It is noted that counsel states on appeal: "In fact, at no point has the director suggested that the business of the organization does not involve the delivery of goods or services [sic] which inherently include specialized knowledge [sic]." Counsel states "all individuals from the end provider to the executives must have a current grasp and working understanding of the operations involving complex, unique and proprietary information and technology that is the core business of the petition." Contrary to counsel's assertion, the director did not specifically determine whether the services provided by the petitioner inherently involve specialized knowledge. Specifically, the director stated: "The various processes and methodology may or may not involve specialized knowledge...." Instead, the director focused on the petitioner's failure to establish that the position offered requires the application of knowledge of the petitioner's processes and whether the beneficiary possesses such knowledge. Upon review, the record does not establish that knowledge of the petitioner's products, processes or methodologies alone would constitute "specialized knowledge." The record indicates that the petitioner implements e-business solutions utilizing technologies that are standard and widespread in its industry, including IBM and AT&T technologies. The petitioner claims to have custom-developed and proprietary tools used to assess client needs and manage client projects, as well as its own internally developed "e-marketing techniques." However, every consulting company develops internal processes and tools utilized to carry out client projects. The petitioner has not provided any evidence to demonstrate that the petitioner's processes and methodologies are different or uncommon compared to those used by any other businesses in its industry, such that it would not be feasible to transfer the knowledge to a professional in the field in a relatively short period of time.

Finally, counsel's reliance on the Norton memorandum is misplaced. It is noted that the memorandum was intended solely as a guide for employees and will not supercede the plain language of the statute 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 professional. Specifics are clearly an important indication of whether a beneficiary's duties encompass specialized knowledge; otherwise meeting the definition would simply be a matter of reiterating the regulations. *See, e.g., Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor.

Counsel cites an unpublished decision of a federal district court in the District of Columbia to stand for the proposition that the beneficiary meets the "customary requirements" for classification as a specialized knowledge employee. The record does not support counsel's claim, as counsel has shown that the facts of this case are analogous to those in the unpublished decision. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Counsel asserts that the director's decision is "in conflict" with the decisions in *Matter of Colley*, 18 I&N Dec. 117, 119 (Comm. 1981), and *Ikea US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Counsel provides neither evidence nor arguments to support these claims, and fails to identify how the director misapplied the law to the facts in this matter.

The AAO acknowledges counsel's claim that the doctrine of collateral estoppel must apply in this case. Counsel notes that in a previous decision to deny the petitioner's request to classify the beneficiary as an L-1A nonimmigrant intracompany transferee, the director found that "the preponderance of the beneficiary's duties will be directly performing the services of the business," rather than managerial and executive duties. In the instant matter, the director determined that "the duties described by the petitioner certainly appear [to] reflect the duties of an executive or manager." Counsel states that the director's decision is "inherently and facially indefensible" given the previous decision of the director.

The Administrative Appeals Office, like the Board of Immigration Appeals, is without authority to apply the doctrine of estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's estoppel claim.

Although the AAO will not address the petitioner's estoppel claim, it must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). As the director properly reviewed the record before him, it was impracticable for the director to address the previous decision on the beneficiary's eligibility for classification as an L-1A intracompany transferee in a managerial or executive 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*, 745 F. Supp. at 16. Based on the foregoing, the record does

not establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. 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.