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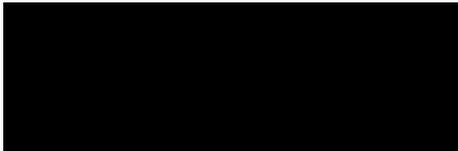


File: SRC 04 092 52411 Office: TEXAS SERVICE CENTER Date: JAN 27 2006

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

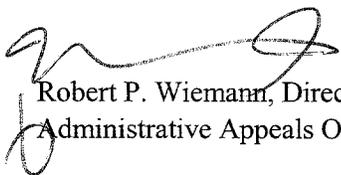
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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 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 provides information technology consulting services for clients in various industries. The petitioner claims to be an affiliate of the beneficiary's foreign employer, located in Mumbai, India. The petitioner seeks to employ the beneficiary as a project manager/senior consultant for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that the U.S. position offered to the beneficiary requires an individual with specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director "created an incoherent new definition" of specialized knowledge which contradicts the actual definition as set forth in the regulations. Counsel contends that the director failed to consider evidence the petitioner submitted in response to the request for evidence and claims that the petitioner recently received approvals for other L-1B petitions. Counsel concludes that the petitioner has submitted "exhaustive probative evidence" to establish the beneficiary's qualifications for classification as an L-1B specialized knowledge employee. Counsel submits a brief in support of the appeal.

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.
- (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 involving 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 a February 5, 2004 letter submitted with the I-129 Petition, the petitioner described the beneficiary's proposed position in the United States as follows:

[T]he Company requires the full-time services of an individual for the position of Project Manager/Senior Consultant. The Project Manager/Senior Consultant will utilize and apply highly specialized knowledge of the Company's VCM solutions and practices, SAP¹ implementation procedures, and in-house processes and methodologies to work with clients on the design, development, and testing of project implementation and delivery.

The Project Manager/Senior Consultant will be responsible for customer interfacing and coordination to discuss SAP implementation and methodologies, establishing and ensuring compliance with requirements and scope capture for assigned projects using in-house processes and procedures; implementing and establishing operating policies and procedures for client projects; working with project teams in the U.S. and India to ensure delivery is consistent with established project delivery processes and methodologies; and data modeling. Additional duties will include system analysis and evaluation; program development; testing,

¹ The petitioner provided the following explanation of "SAP" in a glossary of acronyms attached to its supporting letter: "SAP – Systems, Applications & Products in Data Processing. The world premier provider of client/server business solutions[.]"

design documentation, and program installations; and finalizing user and operations procedures.

The petitioner indicated that the beneficiary holds a degree in mechanical engineering and is certified as an SAP Application Consultant in Production Planning for SAP System R/3, Release 4.0, and is also certified in ISO 9000: 1994 Internal Auditing. The petitioner submitted copies of the beneficiary's SAP and ISO 9000 certificates. The petitioner stated that the beneficiary joined the petitioner's foreign affiliate in September 1999 and is currently employed as a project manager/senior consultant. The petitioner described the beneficiary's specialized knowledge and current job duties as follows:

In this role, he has gained highly specialized knowledge which is different from that generally found in our industry. [The petitioner's group] has developed our own processes and methodologies for project implementation and delivery. These processes and methodologies are developed in-house and to our knowledge are not used or produced by other companies in the U.S. or abroad. [The beneficiary] has specialized knowledge in our custom project execution methodologies which are based on standard industry practices that have been adapted and designed for flexibility to fit the unique needs of each of our customers.

In his present position, [the beneficiary] is responsible for duties which include leading discussions with clients and internal teams on existing SAP competencies and systems; analyzing test procedures, ABAP developments, and SAP interface complexities; preparing models of proposed competency centers; planning and coordinating project activities; managing and training project resources; performing gap analysis and business information analysis; testing plan preparation and execution; and working with various departments within [the foreign entity].

The petitioner further indicated that the beneficiary has "highly specialized and extensive experience in handling large account teams and understanding the clients' business blueprint," and knowledge in Advanced Business Application Programming (ABAP), Dbase IV, and computer aided manufacturing (CAM). The petitioner indicated that the beneficiary "will utilize this specialized knowledge to perform work in the U.S." The petitioner concluded: "The Company will experience significant interruption of business if we cannot employ [the beneficiary] in the U.S. In addition, the Company will be subject to economic inconvenience and tremendous delays in project deployment if we have to train a U.S. worker for this position."

In support of the petition, the petitioner submitted excerpts from its web site, including its corporate profile and graphic illustrations of the company's "Methodology for Custom Development Projects" and "SAP Implementation Methodology."

The director requested additional evidence on May 10, 2004. The director discussed the regulatory definition of "specialized knowledge" and CIS interpretations of the term as addressed in a March 9, 2004 memorandum signed by then Acting Executive Associate Commissioner for the Immigration and Naturalization Service, [REDACTED]. The director advised 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 in the field.” The director further noted: “The evidence must also establish that the beneficiary’s knowledge of the processes and procedures of your company is apart from the elementary or basic knowledge possessed by others.” Specifically, the director instructed the petitioner to:

- Submit evidence relating to the unique methodologies, tools, programs, and/or applications that your company uses. . . .Please describe in detail how these are different from the methodologies, tools, programs and/or applications used by other companies.
- 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.
- Please submit a record – as opposed to merely a letter – from your human resources department detailing the manner in which the beneficiary has gained his/her specialized knowledge. Documentation should indicate the pertinent training courses in which the beneficiary has been enrolled while working for your company as well as the duration of the courses, the number of hours spent taking the courses each day, and certificates of completion of these courses.
- Indicate the minimum amount of time required to train an employee to fill the proffered position. Specify how many workers are similarly employed by your organization. Of these employees, please indicate how many have received training comparable to the training administered to the beneficiary.
- Submit the beneficiary’s resume and all training certificates . . .
- Provide a clear and concise explanation of the systems/methodologies that the beneficiary has specialized knowledge and how this knowledge is fundamentally different from other, similar systems/methodologies found throughout your company. Define all technical terms that are outlined in your support letter and how these systems operate in your company. (i.e. SAP Systems R/3, ABAP, CAM, VCM)

The petitioner responded to the director’s request on May 21, 2004. The petitioner’s response included an April 21, 2004 letter from the head of human resources for the foreign entity explaining that the beneficiary has achieved “excellent” or “very good” performance ratings since joining the company, and “has held progressively responsible roles and been a key employee of the company, involved in several key projects.” The foreign entity’s representative stated that the beneficiary was introduced to the company’s proprietary and specialized products and services in the information technology field and “established himself as a very well qualified professional with an advanced level of knowledge and understanding of all the company’s specialized products and processes.” The foreign entity emphasized that the beneficiary’s knowledge was gained over a period of more than 54 months, and noted that not all of its professionals have gained the type of knowledge and experience held by the beneficiary “and a select few other professionals.” The foreign entity claimed that the beneficiary’s knowledge is “way advanced to the basic knowledge of our other software professionals” and that his knowledge of the foreign entity’s operating procedures, systems and products could not be easily taught or transferred to others, as evidenced by:

- His knowledge of our proprietary products and methodologies which is roughly held by only 8% of our IT professionals.

- The number of projects assigned and supervised to him, several for overseas customers.
- The billings generated through projects assigned to him.
- His consistently excellent performance appraisals over the years.

The foreign entity further noted that the beneficiary's projects have been successfully completed, "thus enhancing the company's competitiveness, productivity and financial position in the market." The foreign entity emphasized one project in particular, and its relevance to the United States position:

In 2002, [the beneficiary] played a key role in defining the SAP operational processes, configuring the systems, and implementing SAP's Planning and Optimizer Tool at M&M India. Mahindra USA has decided to implement the following at their US-based locations: (a) Planning Strategy, (b) Materials Planning and (C) Procurement Planning – using SAP. They have also decided to integrate their SAP and manufacturing related systems in line with M&M India's Farm Equipment Sector, to enable seamless integration of transactions and information.

Having worked and indeed, managed this project in India, [the beneficiary's] thorough knowledge of M&M India's Planning Strategies, Operational Materials Planning and Procurement Planning are now essential for integrating Mahindra USA's processes in line with those of M&M India's Farm Equipment Sector. He will use his deep knowledge of M&M's SAP and Operational Processes to carry out the following activities:

- Integrating Mahindra USA's SAP, Planning and Materials Systems with those of M&M India's Farm Equipment Sector
- Defining Inventory Levels
- Identifying Cost Effective Planning and Operational Measures
- Providing End-User Training on SAP and Materials Processes and Execution
- Providing Support

[The beneficiary] is also trained on [the foreign entity's] Proprietary Project Execution Methodology and will use this expertise on the Mahindra USA Project. Hence, his knowledge of foreign operating conditions and the precise procedures and methodologies that are followed by the parent company in India will be invaluable in allowing the US company to develop similar systems and operating procedures.

The foreign entity concluded that the beneficiary "is indeed one of a small percentage of our employees who is equipped with a unique level of knowledge of [company] products, services and operating systems and methodologies."

The petitioner also submitted a May 3, 2004 letter that further explains the beneficiary's assignments with the foreign entity and the "unique and proprietary" tools he has used, including tools for disaster recovery, "fast-track implementation methodology," risk analysis, organization readiness, data migration, end-user

documentation creation, the Mahindra Online SAP Support (MOSS) tool for implementing SAP systems, and "PLASMA" for enhancing the efficiency of upgrade implementation.

The petitioner also mentioned the beneficiary's involvement in the project for M&M Limited's Farm Equipment Sector, and emphasized that he was chosen for the U.S. assignment based on his knowledge of the group's global operating systems and his "specific and specialized prior knowledge" of a similar project for the Indian parent company. The petitioner stated that the beneficiary received his knowledge and training during the course of four and a half years with the foreign entity, and noted: "There are no specially run courses or programs conducted [by the foreign entity] that we can document." Finally, the petitioner stated that it employs "6 SAP PP Project Manager/Senior Consultants who have the same qualifications" as the beneficiary.

The petitioner also submitted the beneficiary's resume, a letter from the head of IT strategy and ERP for the petitioner's parent company's farm equipment sector, discussing the project to be undertaken by its U.S. subsidiary and confirming that the beneficiary is "best equipped" to manage the project in the United States, copies of company literature further describing its project execution methodology and proprietary tools, and copies of two CIS policy memoranda addressing the interpretation of "specialized knowledge."

In a letter dated May 20, 2004, counsel for the petitioner noted the Texas Service Center had recently approved two cases filed by the petitioner "which raised the same questions," and stated that "virtually all of the questions were addressed by evidence submitted with the initial petition." Counsel claimed that the tools, processes and methodologies described in the attached literature "are developed in-house and it is impossible for any other company in the industry to have access to them." Counsel indicated that it was not clear why the director requested clarification as to whether products and techniques utilized by the beneficiary are used by others in the U.S. and abroad, and notes "of course there are other entities offering high-level SAP consulting services." Counsel emphasized that the petitioner is a highly successful company with well-known U.S. and foreign clients.

Counsel further asserted that the director's request for the beneficiary's training records "indicates a fundamental misunderstanding of what specialized knowledge is and how it is acquired." Counsel claimed "as an executive-level employee serving as SAP Project Manager and Senior Consultant with the company abroad for the past four and a half years, it should be abundantly clear that [the beneficiary] would have to have acquired an extremely specialized and advanced level of knowledge with respect to all the unique tools and methodologies."

Counsel objected to the director's request that the petitioner indicate the minimum amount of time required to train an employee to fill the proffered position, the number of workers similarly employed by the organization, and how many of those have received training comparable to the training administered to the beneficiary. Counsel asserted: "With 12,000 employees, it is unreasonable, unduly burdensome, impracticable, meaningless, and even impossible for [the petitioner] to determine how many employees" have comparable qualifications. Counsel noted the petitioner's statements that the beneficiary's knowledge is estimated to be held by only 8 percent of IT professionals employed by the organization, and that the petitioner only employs six employees in the same position with the same qualifications as the beneficiary.

Counsel objected to the director's request for a clear and concise explanation of the systems and methodologies utilized by the beneficiary, noting that he "has a level of specialized knowledge that exceeds four times over the one year required by the regulations, and "because the job is so highly technical, it is not possible to give a 'clear and concise' job explanation that would make any sense to a layperson, any more than the original job description does."

Finally, counsel addressed several possible criteria of a "specialized knowledge" employee as discussed in a March 9, 1994 Immigration and Naturalization Service memorandum, and reiterated by Associate Commissioner for Service Center Operations [REDACTED] in a December 20, 2002 memorandum. See Memorandum of [REDACTED] Acting Executive Associate Commissioner, Office of Operations, USINS, to All District Directors, et al, *Interpretation of Special Knowledge*, CO 214L-P (March 9, 2004)(Puleo memo); Memorandum of Fujie O. Ohata, Associate Commissioner, Service Center Operations, USINS, *Interpretation of Specialized Knowledge*, HQSCOPS 70/6.1 (December 20, 2002)(Ohata memo). Specifically, counsel claimed that the evidence submitted established that the beneficiary possesses more than "mere familiarity" with the organization's products and service, and knowledge that is not generally held by other project managers in the same industry. Counsel conceded that there would be similarities between the beneficiary's duties and those performed by project managers/senior consultants in other companies, but the majority of his duties require knowledge and experience unique to the petitioner's organization, noting that it would take years to train another worker.

The director denied the petition on June 3, 2004, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he will serve in a specialized knowledge capacity in the United States. Specifically, the director observed that the petitioner did not furnish evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise that make him "key personnel," and noted that mere familiarity with the petitioner's product or services does not constitute special knowledge. The director noted that the L program is intended to be limited, and observed that if the same training is given to all project manager/senior consultants working for the petitioner, "then the key to success is the training, not the person." The director also noted that the petitioner had not submitted evidence to establish that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Finally, the director referred to the restrictive nature of the L-1B program as affirmed by *1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990), stating that the intention of the L-1B program sets a higher bar than simply that of a highly skilled worker.

On appeal, counsel asserts that the director failed to apply the existing definition of the term "specialized knowledge" found at 8 C.F.R. § 214.2(l)(1)(ii)(D) and in the above-cited [REDACTED] and [REDACTED] memoranda, noting that the director did not analyze the beneficiary's qualifications in light of the plain language of the regulatory definition. Counsel claims that the petitioner's evidence establishes that the beneficiary meets the standard of specialized knowledge as defined in the regulations and as interpreted by subsequent CIS memoranda. Counsel further contends that the director ignored the evidence submitted in response to the request for evidence, as none of the evidence was acknowledged in the Notice of Decision, notwithstanding the requirement that the director base her decision on the entire record.

Counsel objects to the director's determination that the petitioner had not established that the beneficiary is "key personnel," asserting "nothing in the regulatory definition or the two interpreting memoranda supports a requirement that specialized knowledge be limited to "key personnel." Counsel questions the director's reference to *1756, Inc. v. Attorney General* as restricting the L-1B visa category, asserting that he could not locate the case and the director had not supported his claim that the specialized knowledge test "sets a higher bar than simply that of a highly skilled worker." Counsel also asserts that the director's implication that the beneficiary possesses only "mere familiarity" with the petitioner's services or procedures suggests that the director did not review the submitted evidence.

In addition, counsel objects to the director's comment that because all employees in the beneficiary's position receive the same training, "the key to success the training, not the person." Counsel notes that specialized knowledge is based upon training and experience, rather than on the beneficiary's "innate abilities." Counsel refers to the [REDACTED] memorandum, which confirms "advanced knowledge need not be narrowly held throughout the company," but states that the petitioner nevertheless established that only six employees out of 12,000 have the same qualifications as the beneficiary.

Finally, counsel again notes that the director had already approved a number of petitions filed by the same petitioner "for persons whose specialized knowledge was less extensive than that of the beneficiary." Counsel concludes that the director's actions were unreasonable, arbitrary and capricious.

As a preliminary matter, the AAO agrees with counsel that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). As the AAO's review is conducted on a *de novo* basis the AAO will herein address the petitioner's evidence & eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). However, the AAO does not concur with counsel's assertion that the director "created an incoherent new definition" of the term "specialized knowledge." The director applied the appropriate standard of review and correctly concluded that the petitioner had not established its burden of proof.

On review, 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), or 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.*

In the instant matter, the petitioner submitted a detailed 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 at 8 C.F.R. § 214.2(l)(1)(ii)(D). The beneficiary's job description, particularly the initial job description provided by the petitioner, does not distinguish his knowledge as more advanced or distinct among other project

managers/technical consultants employed by the foreign or U.S. entities or by other unrelated companies. The majority of the beneficiary's duties relate to implementation of information technology solutions based on software and systems developed by an unrelated company (SAP AG), and general consulting and project management skills, such as understanding customer requirements, systems analysis, establishing project procedures, program development, data modeling, creating design and test documentation, and establishing user and operations procedures. The petitioner initially referred to the petitioner's "specialized knowledge" as including advanced business application programming (ABAP), Dbase IV, computer aided manufacturing, and indicated that he has "advanced knowledge" in "performing integration tests, gap analysis, cut over and post live support activities." None of this "specialized" or "advanced" knowledge relates specifically to the petitioner. The technical environments in which the beneficiary has been and would be working are typical of SAP implementation projects in general and require technical and business knowledge and technical skills that can easily be gained in the industry. An experienced SAP project manager or consultant at an information technology consulting company unrelated to the petitioner would be expected to possess similar expertise.

The AAO notes that the petitioner's initial description did not mention a specific project to which the beneficiary would be assigned in the United States, or explain how his particular experience and knowledge would be applied in the United States. The petitioner simply stated that it had developed its own processes and methodologies for project implementation and delivery that are based on standard industry practices adapted to fit the needs of the company's customers and not generally found in its industry. The petitioner claimed that the beneficiary has gained "highly specialized knowledge" of the processes and methodologies by virtue of his employment with the foreign entity since 1999. These statements were supported by copies of two pages from the company's web site briefly describing its "methodology for custom development projects" and "SAP Implementation Methodology." Notwithstanding counsel's strong objections to the director's request for additional evidence in this matter, the evidence submitted with the initial petition was clearly deficient to establish that the beneficiary possessed specialized knowledge, or that he would be serving in a position involving specialized knowledge in the United States.

In response to the request for evidence and on appeal, the petitioner and counsel have repeatedly asserted that the beneficiary has gained advanced knowledge of in-house processes, methodologies and tools that are proprietary and unique to the petitioner and its foreign parent company, including the company's "project execution methodology," systems analysis tools, Plasma, MOSS, and risk analysis tools. The petitioner suggests that knowledge of these methodologies and tools is essential for performance of the beneficiary's job duties, and also differentiates his knowledge from that which is generally known by similarly employed professionals in the beneficiary's field. However, the petitioner not shown that knowledge of these procedures and tools constitutes specialized knowledge.

The petitioner's processes and tools have not been shown to be significantly different from those used by other information technology consulting firms, which necessarily also utilize project execution methodologies, and automated tools for assessing customer readiness and requirements, data migration, documentation, test scripts, upgrades, project tracking, risk analysis, etc., in order to efficiently manage similar client projects. The petitioner did not specify the amount or type of training or experience required for its technical staff members to become proficient with using the company's tools and procedures and therefore it is impossible for the AAO to assess whether these processes are particularly complex or different compared

to those utilized by other companies in the industry, or whether it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are simply customized versions of standard methods, processes and tools used in the industry. For this reason, the petitioner has not established the beneficiary's familiarity with the petitioner's processes and procedures constitutes specialized knowledge.

In addition, it is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).² As stated by the Commissioner in *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. The evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

Counsel claims on appeal that the director erred by applying a requirement that petitioner establish that the beneficiary can be deemed "key personnel" and also disputed the director's reliance on *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990). In *1756, Inc.*, the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court noted that the legislative history demonstrated a concern that the L-1 category would become too large: The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service." *Id.* at 16. (citing H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750,

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 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.

2754, 1970 WL 5815). The court stated: "[I]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance. Congress referred to 'key personnel' and executives." *1756, Inc.*, 745 F. Supp. at 16. While the AAO acknowledges that the *1756, Inc.* decision cited by the director pre-dates the 1990 amendment to the definition of specialized knowledge, it has been noted above that Congress' 1990 amendments to the Act did not specifically overrule *1756, Inc.* nor any administrative precedent decision, or did the 1990 amendments otherwise mandate a less restrictive interpretation of the term "specialized knowledge."

Accordingly, 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 (██████████ 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 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.")

Therefore, 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 L-1B intracompany transferee classification. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee.

In her request for evidence, the director instructed the petitioner to provide information and documentation which would assist her in determining whether the beneficiary's knowledge could be considered "advanced" within the petitioner's organization, including information regarding how long it would typically take to train an employee to fill the position, the number of similarly employed workers within the organization, and the number who have received training comparable to that received by the beneficiary. In response, counsel claimed that specialized knowledge is not obtained through completion of training courses, and noted that the company does not maintain records of specific training courses taken by each of its 12,000 employees. Counsel claimed that it would be "impossible" for the foreign entity to identify the number of employees with comparable training. Counsel asserted that since the beneficiary has been employed with the foreign entity as a project manager/senior consultant for over four years, it should be "abundantly clear" that the beneficiary is an "executive employee" who has "an extremely specialized and advanced level of knowledge with respect to all the unique tools and methodologies." The foreign entity's representative stated: "[I]t is only a few of our employees who we designate as having special knowledge and skills that is way advanced to the basic knowledge of our other software professionals." The foreign entity noted that the beneficiary's knowledge is held by 8 percent of its IT professionals, emphasized the number of projects assigned to him, and noted his excellent performance appraisals as evidence of his specialized knowledge. The petitioner noted "there are no specially run courses or programs conducted. . .that we can document," but went so far as to state that the organization only employs "6 SAP PP Project Manager/Senior Consultants" who have the same qualifications as the beneficiary.

Accordingly, the petitioner's response appears to concurrently indicate that: (1) it is impossible to determine how many similarly qualified workers are employed within the company; (2) the beneficiary is one of 960 employees (8 percent of the petitioner's workforce of 12,000) possessing the same knowledge and experience with the petitioner's processes and methodologies; and (3) the beneficiary is one of six employees possessing the same knowledge and experience with the petitioner's processes and methodologies. The AAO is not in a position to determine which one of these statements is the most accurate and it is therefore difficult to compare the beneficiary to similarly employed workers within the petitioner's organization. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the fact that the petitioner's organization does not keep detailed records of training courses completed by its employees "in a database" should not prevent the company from providing some estimate of the training and experience requirements for a project

manager/senior consultant position, or some general overview of its training program, particularly with respect to training in its in-house tools and methodologies. 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)).

Accordingly, petitioner has not adequately substantiated its claim that the beneficiary possesses "advanced" knowledge of the company's processes, procedures and tools. As noted above, the petitioner has not identified with any specificity the type or length of training received by the beneficiary as compared to that received by other employees, nor provided evidence that he actually completed any training in the company's processes and tools. In addition, as a consultant providing services to customers, the beneficiary is primarily a user of the company's internal processes and tools, not a developer, designer or trainer. The beneficiary undoubtedly uses the company tools and procedures to facilitate and ensure the quality of his work, but the record reflects that his primary role is as a technical consultant utilizing technologies, such as SAP, that were developed by other companies rather than proprietary or specific to the petitioner.

The petitioner attempts to narrowly define the beneficiary's knowledge of the petitioner's processes and tools in an effort to establish that his knowledge is advanced. Specifically, the petitioner claims that the beneficiary played a key role in defining SAP and operational processes, system configuration and implementation of SAP's Planning and Optimizer Tool for the petitioner's and foreign entity's parent company. The petitioner indicated that its affiliate, Mahindra USA, intends to implement similar tools in order to integrate its SAP and manufacturing systems in line with the parent company's systems, and that the beneficiary's experience with the foreign project is essential to ensure successful completion of the systems integration project. The beneficiary's resume confirms that he worked on the project for the Indian parent company from April to May 2002, almost two years prior to the filing of the petition. His role within the project appeared to be limited to leading the creation and implementation of uniform product codes across the foreign entity's supply chain network using standard SAP tools. The beneficiary's two months of experience with a relevant overseas project is insufficient to establish that he has acquired advanced knowledge of the petitioner's internal procedures and tools compared to the petitioner's other project manager/consultants working on similar projects for similar clients. Although the knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products, services or processes.

Finally, even assuming that the petitioner had established that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures, there is no evidence in the record to establish that the position with the United States entity requires such knowledge. As noted above, the beneficiary will be performing duties typical of an IT consultant, using technologies and skills that are common in his profession. While it is clear that he would use the petitioner's internal tools plan and monitor project activities, the record does not establish that the beneficiary will be performing any duties which would require more than proficiency with the company's internal procedures.

In sum, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among SAP consultants in the information technology field. The petitioner has failed to

demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. 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 successfully 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. 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, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

Rather, a review of the record reveals that other information technology companies utilize comparable procedures and tools, that the claimed specialized knowledge is itself widely available within the petitioner's organization, and that other organizations, although they do not utilize exactly the same project planning and execution procedures, may employ workers with technical knowledge and skills equivalent to that of the beneficiary. Furthermore, the petitioner has failed to document that the beneficiary has actually received training in the company's internally developed procedures and tools, much less established that his training and experience have resulted in advanced knowledge of such procedures which would elevate him to the level of key personnel. Thus, as the petitioner has not established that the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, the director reasonably determined that the beneficiary does not qualify as a specialized knowledge worker.

Counsel's reliance on the [REDACTED] memorandum as a means for establishing the beneficiary's qualification for classification as a specialized knowledge worker is not persuasive. In reference to the [REDACTED] memorandum, counsel claims that the beneficiary's knowledge is valuable to the petitioner's competitiveness and is critical to preventing significant interruption of business and potential monetary penalties. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

Counsel notes that CIS approved other L-1B nonimmigrant petitions that had been previously filed on behalf of beneficiaries by the same petitioner for similar or less specialized positions. It must be emphasized that each nonimmigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. If other nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of*

Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions by the petitioner for similar positions, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.

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.