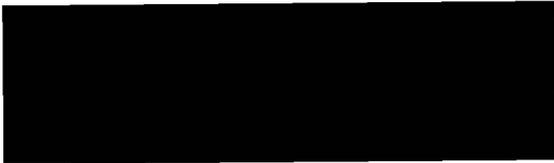




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File: SRC 04 231 51117 Office: TEXAS SERVICE CENTER Date: **OCT 24 2006**

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)

ON 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, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 states that it is engaged in the manufacture and distribution of heating elements and systems. It claims to be an affiliate of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as an electronic engineer for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position 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's decision is based on erroneous conclusions of law and erroneous interpretations of fact. Counsel further asserts that the director based the decision on grounds never raised in a request for evidence, in violation of 8 C.F.R. § 103.2(b)(8). Counsel submits a brief in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary 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 a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

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

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

The nonimmigrant petition was filed on August 27, 2004. In a letter dated August 24, 2004, the petitioner described the beneficiary’s current duties and experience gained with the U.S. company’s foreign affiliate as follows:

[The beneficiary] has been employed with [the foreign entity] for two years as Electronic Engineer. During this time, she has gained detailed and confidential expertise related to the proprietary products developed by the company. The proprietary (i.e., confidential and exclusive) nature of [the petitioner’s] products, is demonstrated by the fact that our products are trademarked, our technologies are patented and the employees who work on these products must sign confidentiality agreements. As Electronic Engineer, [the beneficiary] has been performing increasingly specialized electronic engineering duties related to our products and has developed in-depth knowledge of [the company’s] global standards and requirements for producing its products. Specifically, [the beneficiary] has gained in-house knowledge of the inner workings of our induction products, technologies and procedures, of the software used in our microprocessors and Field Programmable Gate Array Systems, and of the interface board in the washing machine products originally developed by our German parent company. In fact, [the beneficiary] was assigned to the Research and Development department and Quality Assurance department of our parent company in Germany, where she gained even more detailed insight into the complexities of our products.

In her role with [the foreign entity], [the beneficiary] is responsible for the design and implementation of [the company’s] electronic products. She plans, coordinates and executes new product introduction activities and prepares input of product requests from customers.

She is also involved in new project development and planning for system design and software development. [The beneficiary] has developed particular expertise in software design for microprocessor control units used in the control board of [company]. machinery and induction cookers, as described above. In this regard, she analyzes hardware and software defects and defines test methods for projects. Further, she ensures that her projects run on schedule and on budget. During her tenure with the company, [the beneficiary] has obtained specialized knowledge of [company] inventions and trade secrets regarding the development and manufacture of our electronic products and software design, and of technical specifications of these products including plans, designs, drawings, computer programs and formulae. [The beneficiary's] specialized, internal knowledge of [company] methodologies and product specifications is essential in developing our electronic products as well as in serving our customers. [The beneficiary's] institutional knowledge of the inner workings of software development for our products is critical to the efficient and successful operations of our company.

Based on her extensive knowledge and experience in these areas, [the beneficiary] has established herself as an expert with [the company's] proprietary electronic induction systems and processes. Having been involved in full product development from design to implementation working with [corporate] international teams in China and Germany, [the beneficiary] has gained advanced knowledge of these electronic systems and is an integral part of the team ensuring that [corporate] standards are met on a worldwide basis.

The petitioner indicated its intent to transfer the beneficiary to the United States to serve as an electronic engineer, noting that she would continue "carrying out her current software and system design responsibilities" with the U.S. company. Specifically, the petitioner stated:

We now require the expertise and essential skills of [the beneficiary] in designing and implementing the company's proprietary products to ensure the appropriate standardization of products being produced in the United States. Specifically she will prove her software design expertise for North America Touch Control G4 induction UL, and G4 induction for Electrolux in our trademarked products.

* * *

As described above, [the beneficiary] is a key employee with [the foreign entity] who possesses highly specialized knowledge of these systems. Because [the petitioner's group] holds its technological information confidential, this knowledge and expertise is either proprietary or extremely confidential in nature and, therefore, is not possessed by any individual outside [the petitioner's organization].

The petitioner submitted supporting documenting including: a copy of the beneficiary's employment contract with the foreign entity, which includes an employee confidentiality agreement; company and product

information from the petitioner and foreign entity's web sites; and a copy of the beneficiary's certificate for a bachelor's degree in telecommunications.

The director issued a request for additional evidence on September 20, 2004. The director cited the regulatory definition of "specialized knowledge" and advised the petitioner that the classification "was not intended for all employees with any level of specialized knowledge." The director noted that "it cannot be concluded. . . that all employees who hold special knowledge qualify as "specialized knowledge workers." The director referenced a 1994 legacy Immigration and Naturalization Service (INS) memorandum as providing guidance in establishing that an alien possessed specialized knowledge, and noted that the beneficiary's knowledge must be shown to be different and advanced from the knowledge generally held within the industry. Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Special Knowledge*, CO 214L-P (March 9, 1994) ("Puleo memorandum"). The director noted that the L-1B classification does not extend to persons whose general knowledge and expertise enable them to merely produce a product or provide a service.

Accordingly, the director instructed the petitioner to submit evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field, and evidence to establish that the beneficiary's knowledge of the processes and procedures of the company is apart from the elementary or basic knowledge possessed by others. Specifically, the director instructed the petitioner to submit the following evidence:

What is it specifically that makes this knowledge so uniquely different – and proprietary – from others that are similar in the industry? How much precise input did the beneficiary have in creating these systems, and what were those contributions? Are there other individuals at the United States and foreign entity's who currently have the same knowledge of these systems the beneficiary possesses? If so, how many? Please justify your answer.

Having knowledge of [the petitioner's] products and services is not sufficiently considered specialized knowledge. It must be proven that the knowledge acquired is specialized above and beyond the common knowledge a regular worker possess[es] or the industry as a whole.

Please explain what type of training and/or processes are involved in preparing an individual for this type of position.

In a response dated September 21, 2004, counsel for the petitioner addressed each point raised by the director in the request for evidence. Counsel acknowledged the director's request for evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and evidence that the beneficiary's knowledge of the processes and procedures of the company is apart from the elementary or basic knowledge possessed by others. Counsel noted that these standards come from the Puleo memo and stated that "the Puleo memo addresses how you evidence specialized knowledge when proprietary information is **not** involved." (Emphasis in original). Counsel asserted that the petitioner's products are proprietary as they are protected by confidentiality, patent, copyright and trademark, and attached

documentation related to the petitioner's patent documentation for "Touch and Proximity Sensor Control systems and Methods with Improved Signal and Noise Differentiation." Counsel further asserted:

The grant of trademarks, patents, and copyrights shows that the U.S. government has already determined that the company's products, processes and technologies are unique to the company and significantly different from others in the industry. As such, knowledge of the inner workings of these products, processes and technologies, by definition, is exclusive to the company and not generally possessed by others in the field. . . . [The beneficiary] is one of the company's employees who possess special knowledge of the inner workings of these exclusive products, as she works with patented, copyrighted and trademarked technology in developing and designing software for the company's induction technologies used in its Touch Control products.

Counsel further objected to the director's statement that not "all employees who hold special knowledge qualify as 'specialized knowledge' workers," stating that such statement is contrary to the regulatory definition which clearly provides that "special knowledge" does qualify an individual for L-1B classification based on the plain language of the regulation."

Counsel emphasized that the beneficiary received on-the-job training in the company's proprietary products, technologies and processes before moving on to an independent role in designing and developing software for these products. Counsel further describes the beneficiary's qualifications:

[S]he designed confidential software for a User Interface Board that used the same series Multipoint Control Unit ("MCU") that the company uses in its patented Touch Control products, which are the products with which [the beneficiary] will be working in the U.S. During her tenure with the company, she has gained knowledge of the product components, technologies and coding, how to design and develop software for the products and how to apply the company's in-house processes and methodologies to provide sales and after-sales service. Her extensive experience with the company in learning and then developing the detailed complex induction technologies and software, as well as with the company's particular methodologies for implementing and servicing Touch Control products for customers, provide her with in-depth expertise of these products and procedures. . . . Again since these products are proprietary, knowledge and experience with the products is by definition not generally available in the field As such, she has noteworthy and advanced knowledge of the inner workings and details of the company's processes and technologies not generally possessed by others in the field. Clearly this amounts to much more than "mere familiarity with [the company's] products and services. . . ."

Counsel further asserted that the beneficiary's knowledge of the petitioner's "proprietary products and unique processes" is much more than general knowledge that allows her to produce a product or provide a service. Counsel stated that the beneficiary has "in-depth" knowledge of the inner workings and source code of software design for induction technologies and Touch Control products, and "advanced knowledge of the company's policies and procedures for providing dedicated customer service."

Counsel referenced the Puleo memorandum, noting that the memo contains several characteristics of an employee possessing specialized knowledge, including “knowledge which, normally, can be gained only through prior experience with the employer.” Counsel again emphasized that the beneficiary’s knowledge relates to the “inner workings of the company’s induction technologies and manufactured Touch Control products” and that since no other company manufactures these products, knowledge can only be gained through experience with the petitioner’s group of companies. Counsel concluded that the beneficiary clearly qualifies for L-1B status based on the standards enumerated in the Puleo memo.

Counsel acknowledged the director’s request for evidence regarding other company employees, but stated: “Please note that knowledge possessed by other company employees in the U.S. and abroad is irrelevant....Requiring that the beneficiary’s knowledge be advanced as compared to others within the company is an incorrect standard.” (Emphasis in original). Counsel asserted that the Puleo memorandum provides that “specialized knowledge is shown if ‘the knowledge is different from that generally found in the particular industry.’” Counsel further emphasized that the Puleo memorandum states unequivocally that “the advanced knowledge need not be narrowly held throughout the company.” Counsel stated that Citizenship and Immigration Services (CIS) “is exceeding its authority by attempting to resurrect the previous standards, wherein it had to be shown that only a small percentage of the company’s employees possessed the special knowledge.”

Finally, with respect to the training required for the beneficiary’s position, counsel noted that the petitioner’s group does not have a formalized training program for the electronic engineer position, but that employees hired for the position receive on-the-job training for one year during which they “gain in-depth knowledge of the inner workings of the company’s proprietary products technologies and methodologies.” Counsel notes that there are “several employees with this specialized (proprietary) knowledge,” but asserts that “this fact is irrelevant . . . and in no way lessens the beneficiary’s specialized (proprietary) knowledge.”

In a September 20, 2004 letter submitted in response to the director’s request, the petitioner explained the beneficiary’s qualifications as follows:

[The beneficiary’s] advanced level of specialized knowledge of [the company’s] proprietary induction systems and Touch Control processes and products are critical to the effectiveness, consistency and level of quality standard necessary to achieve the goals and objectives of [the petitioner] in the United States. . . . [The beneficiary] holds in-depth knowledge of the induction product components, technologies and internal coding of the software design and development for these Touch Control products and of the company’s internal procedures for providing sales and after-sales service. She has knowledge of the source code for this software, which is used in our microprocessor and Field Programmable Gate Array Systems, and of the interface board in the Touch Control washing machine products originally developed by our German parent company. [The beneficiary] worked with our parent company’s R&D department in Germany in her position as Electronic Engineer designing software for the User Interface Board. The Multipoint Control Unit (“MCU”) involved in this User Interface Board is the same series used in our patented North American Touch Control, G4 induction UL and G4 induction for Electrolux products, the proprietary products with

which [the beneficiary] will be working in the United States. [The beneficiary] has obtained specialized knowledge of these [company] inventions and trade secrets regarding the software development and manufacture of our electronic induction products and software design for Touch Control products, and of technical specifications of these products including plans, designs, drawings, computer programs and formulae.

The director denied the petition on October 5, 2004, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge, or that she had or would be employed in a capacity requiring specialized knowledge. The director summarized the petitioner's claims and found that the fact that the beneficiary designed software for a User Interface Board that uses the same Multipoint Control Unit series that is used in the Touch Control products is not sufficient to establish that the beneficiary has specialized knowledge. The director determined that the petitioner had not demonstrated that the work performed by the beneficiary abroad "is beyond that normally performed by electronic engineers." The director further found that the proffered position had not been demonstrated to require skill and knowledge beyond that generally possessed by competent electronic engineers. Finally, the director acknowledged that the beneficiary "probably has some knowledge of the petitioner's proprietary products . . . and processes" but concluded that the record did not establish that this knowledge rises to the level of specialized knowledge.

On appeal, counsel for the petitioner contends that the director "for the first time asserts that the Petitioner has not established that the position in the U.S. requires the services of an individual possessing specialized knowledge." Counsel argues that, pursuant to 8 C.F.R. § 103.2(b)(8), it was inappropriate for the director to deny the petition on this basis without first requesting additional evidence. Counsel further contends that the director's denial of the petition on this basis consisted of a only a conclusory statement with no reasoning supporting her decision. Counsel asserts that the petitioner provided ample evidence to meet this statutory requirement with the original petition submission and in response to the request for evidence to demonstrate that the U.S. position "requires someone with specialized knowledge of the company's proprietary and confidential products and technology in order to adequately oversee and implement the design and development of software for the company's proprietary and confidential Touch Control products in the U.S." Counsel asserts that "this knowledge is clearly not possessed by anyone outside the company, including 'competent electronics engineers.'"

Counsel contends that the director "merely asserts that the Beneficiary's proprietary knowledge of the Petitioner's patented and confidential software design is not 'specialized,' without explaining how this is so or addressing the extensive documentation submitted." Counsel notes that the director conceded that the beneficiary has "some knowledge" of the company's proprietary knowledge, and also acknowledged the petitioner's statement that the beneficiary designed confidential software for the same patented products she would be working on in the United States. Counsel contends that based on these facts, the director should have concluded that the beneficiary possesses specialized knowledge.

Counsel emphasizes that the beneficiary has "special" knowledge due to her "detailed and advanced knowledge of these confidential and proprietary products." Counsel again asserts that the request for evidence incorrectly noted that not "all employees who hold special knowledge qualify as 'specialized knowledge'

workers.” Counsel slightly amends and repeats as follows the description of the beneficiary’s “advanced” knowledge she previously provided in response to the request for evidence:

During her tenure with the company, she has gained advanced knowledge of the product components, technologies and coding, how to design and develop software for the products and how to apply the company’s in-house processes and methodologies to provide sales and after-sales service. Her extensive experience with the company in learning and then developing the detailed, complex induction technologies and software, as well as with the company’s particular methodologies for implementing and servicing Touch Control products for customers, provides her with in-depth expertise of these products and procedures. The Beneficiary applies this knowledge to design and develop improvements to existing products as well as to design and develop new products for the company. For these reasons, the beneficiary has noteworthy and advanced knowledge of the inner workings and details of the company’s processes and technologies not generally possessed by others in the field. Clearly, this amounts to much more than ‘mere familiarity. . . . Again, since these products are proprietary, knowledge and experience with the products is by definition not generally available in the field.

Finally, counsel again references the Puleo memo, noting that the beneficiary possesses “knowledge which, normally, can be gained only through prior experience with” the petitioner.

On review, the petitioner has not demonstrated that the beneficiary’s prospective position requires “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). Instead, the petitioner consistently describes the position as one requiring an experienced and skilled electronic engineer, rather than someone who possesses specialized knowledge.

As a preliminary matter, the AAO notes that 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). Upon review of the director’s decision, the AAO agrees that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. 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)(noting that the AAO reviews appeals on a *de novo* basis).

Counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence regarding the specific issue of whether the proffered position in the United States requires specialized knowledge before denying the petition on these grounds. The cited regulation requires the director to request additional evidence in instances “where there is no evidence of ineligibility, and initial evidence or eligibility information is missing.” *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director’s request for evidence addressed the beneficiary’s knowledge and the knowledge required for the position of electronic

engineer. Given that the petitioner specifically stated that the beneficiary would be performing essentially the same duties in the United States as she currently performs abroad, the AAO finds that the request for evidence sufficiently addressed the issue.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself, particularly since the petition was also denied on a separate, related ground. The petitioner has in fact chosen not to supplement the record on appeal and merely asserts that the evidence submitted with the petition and in response to the request for evidence was sufficient to establish that the U.S. position requires an employee with specialized knowledge. Counsel's suggestion that the request for evidence did not address all of the grounds for denial is not persuasive.

Regarding the petitioner's claim of specialized knowledge, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel places emphasis on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. Merely establishing that the facts of the instant petition resemble a particular example provided in the 1994 memo is insufficient to establish that the beneficiary qualifies for this visa classification. The AAO will weigh guidance outlined in policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. 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 that it involves specialized knowledge. *Id.* It is also appropriate for the AAO to then 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 (Comm. 1982),

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

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

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

Id. at 53.

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of “specialized knowledge” in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of “proprietary” knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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, supra* 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 that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, “[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.” 18 I&N Dec. at 119. According to *Matter of Penner*, “[s]uch a conclusion would permit extremely large numbers of persons to qualify for the ‘L-1’ visa” rather than the “key personnel” that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

Thus, based on the intent of Congress in its creation of the of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish eligibility for the L-1B intracompany transferee classification. The petitioner should also submit evidence to

show that the beneficiary is being transferred to the United States as a crucial employee. As discussed below, the beneficiary's job description does not distinguish her knowledge as more advanced or distinct among electronic engineers employed by the foreign or U.S. entities.

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.

Counsel relies in part on the 1994 Puleo memo, which the AAO notes also allows CIS to compare the beneficiary's knowledge to the general United States labor market in order to distinguish between specialized and general knowledge. The Acting Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Puleo memo, *supra*. A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. *Id.* The analysis for specialized knowledge therefore requires a review of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

Counsel claims that the director erred by attempting to compare the beneficiary's knowledge with those of other workers employed within the petitioner's group of companies when issuing the request for evidence. Counsel's assertion is not persuasive. While the decisions cited above pre-date the 1990 amendment to the definition of "specialized knowledge," it has been noted above that Congress's 1990 amendments to the Act did not specifically overrule *1756, Inc.*, nor any administrative precedent decision, nor did the 1990 amendments otherwise mandate a less restrictive interpretation of the term "specialized knowledge." The House Report, which accompanied the 1990 amendments, stated:

One area within the L visa that requires more specificity relates to the term "specialized knowledge." Varying interpretations by INS have exacerbated the problem. The bill therefore

defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company.

H.R. Rep. No. 101-723(I), 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418. As previously noted, the statutory definition states, “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 knowledge of processes and procedures of the company.” 8 U.S.C. § 1184(c)(2)(B).

Prior to the Immigration Act of 1990, the statute did not provide a definition for the term specialized knowledge. Instead, the regulations defined the term as follows:

“Specialized knowledge” means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organizations’ product, service, research, equipment, techniques, management or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

8 C.F.R. § 214.2(l)(1)(ii)(D)(1990).

Although the Immigration Act of 1990 provided a statutory definition of the term “specialized knowledge,” Congress did not give any indication that it intended to expand the field of aliens that qualify as possessing specialized knowledge. Although the statute omitted the term “proprietary knowledge” that was contained in the regulations, the statutory definition still calls for “special knowledge’ or an “advanced level of knowledge,” similar to the original regulation. Neither the 1990 House Report nor the amendments to the statute indicate that Congress intended to expand the visa category beyond the “key personnel” that were originally mentioned in the 1970 House Report. Considered in light of the original 1970 statute and the 1990 amendments, it is clear that Congress intended for the class of nonimmigrant L-1 aliens to be narrowly drawn and carefully regulated, and to this end provided a specific statutory definition of the term “specialized knowledge” through the Immigration Act of 1990.

The Puleo memorandum, although issued after the 1990 amendment, does not differ significantly from previous CIS guidance on this issue, other than removing the requirement that a beneficiary’s specialized knowledge be proprietary or unique. For example, the memorandum indicates that one possible characteristic of an employee who possesses specialized knowledge is that the individual “has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image or financial position.” Puleo memo, *supra*. While the language differs from previous interpretations, this criterion is another way of stating that the petitioner may establish a beneficiary’s specialized knowledge credentials by submitting evidence that the beneficiary is a “key employee.” Accordingly, counsel’s argument that CIS is prohibited from comparing the beneficiary’s knowledge to that

of similarly employed workers within the petitioner's international group is not persuasive, and the AAO will consider whether the beneficiary qualifies as "key personnel" in its analysis.

In this matter, the petitioner has provided only general descriptions of the beneficiary's current and proposed roles as an electronic engineer that convey little understanding of the type or extent of specialized knowledge that would be required to successfully perform the purported job duties. The petitioner claims that the beneficiary, among other duties, has been involved in software design for a "User Interface Board that used the same series Multipoint Control Unit ('MCU') that the company uses in its patented Touch Control products, which are the products with which [the beneficiary] will be working in the U.S." Based on this limited information, it appears the beneficiary has previously participated in the development of software for a component of a component that is similar to a one that is used in the patented Touch Control product manufactured by the U.S. company. The petitioner states that the beneficiary has "been involved in full product development from design to implementation working with . . . international teams in China and Germany" and specifically has gained "in-house" knowledge of the inner workings of our induction products, technologies and procedures, of the software used in [the company's] microprocessors and Field Programmable Gate Array Systems, and of the interface board in the washing machine products originally developed by [the company's] German parent company." The petitioner states that the beneficiary will provide her software design expertise for "North American Touch Control, G4 induction UL and G4 induction for Electrolux" in its "trademarked products."

The petitioner has provided no detailed description of the beneficiary's specific assignments within the petitioner's affiliate and parent company, nor an explanation of what specific skills, such as hardware or programming languages, she used to develop software for the above-referenced "user interface board" or the particular products on which she worked. The petitioner repeatedly emphasized the "detailed and confidential expertise related to the proprietary products developed by the company," without actually providing any details regarding the beneficiary's knowledge or the products themselves. Similarly, it is not clear exactly what role the beneficiary will have with respect to the "North American Touch Control" product, nor is there evidence that she has worked specifically with this product in the past. Nor did the petitioner explain the beneficiary's role in "G4 induction," explain to what this term refers, nor identify whether the beneficiary has previous experience in this area. 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)).

Furthermore, the director specifically requested that the petitioner identify "how much precise input" the beneficiary had in creating these systems and what the beneficiary's specific contributions were. The petitioner failed to respond to the director's inquiry and instead provided a series of general statements regarding the beneficiary's experience gained in "confidential and trademarked induction technologies and Touch Control products" and "advanced knowledge of the company's policies and procedures," emphasizing that such knowledge would be used in the U.S. position. The question of the beneficiary's actual role in the development of such systems and the applicability of such experience in the U.S. was left mainly unanswered by the petitioner's conclusory assertions regarding her claimed specialized knowledge. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Overall, the record establishes that the beneficiary possesses some level of knowledge of the petitioner's proprietary products that is not commonly found in the industry. However, if CIS were to follow counsel's reasoning, any employee who had been involved in the development of a proprietary product for any company in any capacity, regardless of the extent of their contribution, would qualify for this visa classification. Thus, while the beneficiary may possess knowledge not possessed by other electronic engineers working with similar products outside of the petitioner's group, work experience and knowledge of a firm's technically complex products by themselves will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. at 53.

Although specifically requested by the director, the petitioner has submitted no evidence that would distinguish the beneficiary from any other electronic engineer employed within its international organization. Counsel specifically objected to the director's request that the petitioner submit evidence that would set the beneficiary's knowledge apart from others within the petitioner's organization, yet continues to claim that the beneficiary's knowledge is "advanced." As discussed above, counsel's position is incorrect; the petitioner is required to establish that the beneficiary is a key employee rather than merely a skilled worker with knowledge of the petitioner's products and processes. Again, based on counsel's arguments, anyone who has worked as an electronic engineer with the foreign entity for two years, the same length of time as the beneficiary, would possess "special knowledge" or an "advanced level of knowledge." Counsel's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker.

Accordingly, the petitioner's claim fails on an evidentiary matter. Contrary to counsel's assertions, it was reasonable for the director to request information regarding other similarly employed workers within the U.S. and foreign entities, the extent of the beneficiary's involvement in the development of proprietary technologies, and other evidence that would set the beneficiary's knowledge of the processes and procedures of the company apart from the knowledge possessed by others within the petitioner's family of companies.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 8 C.F.R. § 214.2(I)(3)(viii). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Based on the petitioner's representations, the beneficiary, like all of the electronic engineers hired by the petitioner's group has a bachelor's degree and some experience in the field and received approximately one year of "hands-on" training in the company's systems, which including exposure to the source code, internal configuration and design of the products. Like all similarly employed engineers, she moved into a "more independent role" after completing her training and is now responsible for designing software for the company's products. There is no evidence that the training she completed was any different from that completed by all of the other electronic engineers employed in the petitioner's international group. The petitioner offered no information regarding other employees working for the foreign company, such that the director or the AAO could make a meaningful comparison between the beneficiary's claimed "advanced

knowledge” and the knowledge possessed by other workers within the petitioner’s organization. Although 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 and processes. Similarly, as discussed above, the petitioner failed to provide any detailed information regarding the beneficiary’s assignments with the foreign entity which would establish that her duties were advanced or different from those performed by other electronic engineers. The lack of evidence in the record makes it impossible to classify the beneficiary’s knowledge of the petitioner’s products or procedures as advanced, and precludes a finding that the beneficiary’s role is “of crucial importance” to the organization. While it may be correct to say that the beneficiary is a highly skilled and experienced employee, the petitioner has not established that the beneficiary rises to the level of a specialized knowledge or “key” employee, as contemplated by the statute. *See Matter of Penner*, 18 I&N Dec. at 53.

Finally, the AAO will address counsel’s claim that the beneficiary qualifies for classification as a specialized knowledge employee pursuant to characteristics outlined in the 1994 Puleo memo, specifically, that she possesses knowledge which normally can only be gained through prior experience with the foreign employer. While the factors discussed in the Puleo memorandum may be considered, the regulations specifically require that the beneficiary possess an “advanced level of knowledge” of the organization’s processes and procedures, or a “special knowledge” of the petitioner’s product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As discussed above, the petitioner has not established that the beneficiary’s knowledge rises to the level of specialized knowledge contemplated by the regulations.

Regardless, the petitioner’s and counsel’s claims regarding the beneficiary’s qualifications for this visa classification, in general, are not supported by evidence. As stated in the 1994 Puleo memorandum:

[T]he mere fact that a petitioner alleges that an alien’s knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing *through the submission of probative evidence that the alien’s knowledge is uncommon noteworthy, or distinguished by some unusual quality* and not generally known by practitioners in the alien’s field of endeavor. Likewise, a petitioner’s assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company *must be supported by evidence describing and setting apart that knowledge from the elementary of basic knowledge possessed by others*. It is the weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge.

Puleo memo, *supra* (emphasis added).

Based on the minimal evidence submitted to establish the beneficiary’s claimed specialized knowledge, and the failure to differentiate through the submission of evidence the beneficiary’s knowledge from that of other similarly employed engineers within the company, the petitioner has not established that the beneficiary’s knowledge can be considered truly “special.” Nor has the petitioner established that the beneficiary’s knowledge is “advanced” such that it can be distinguished from the knowledge possessed by others within the petitioner’s organization. Accordingly the beneficiary may not be considered “key personnel.”

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 possesses specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.