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**U.S. Citizenship  
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File: SRC 05 216 51979 Office: TEXAS SERVICE CENTER Date: JUN 04 2007

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 is engaged in the development of computer technology solutions. The petitioner states that it is the parent company of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as a system software engineer 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 petitioner would employ him in a position requiring specialized knowledge.

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 director addressed 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. The AAO will further consider the related issue of whether the petitioner established that the beneficiary has

at least one continuous year of full time employment in a position that involved specialized knowledge within the three years preceding the filing of the petition.

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.

The nonimmigrant petition was filed on August 2, 2005. In a letter dated July 21, 2005, the petitioner described the beneficiary's current duties with its Indian subsidiary as follows:

[The beneficiary] is a Systems Software Engineer who has been employed by [the foreign entity] from June 2004 to the present. As a System Software Engineer, [the beneficiary] is responsible for design, development and testing of the company's proprietary software products. Specifically, he has advanced knowledge of the Intelligent Platform Management Interface (IPMI) family of products based upon his experience in the development of IPMI firmware and utilities. The IPMI Standard defines a hardware/software subsystem that performs key platform monitoring and management independently from the main processor. [The petitioner] offers a complete solution for Platform Management based on the IPMI 2.0 specification, including several building blocks: IPMI v2.0 Firmware Stack; Unified Management Server (UMS) Software and AMIBIOS8 IPMI eModule. [The petitioner's] firmware and hardware solutions provide system health monitoring, recovery capabilities, logging and alerting, identification of failed hardware units and enhanced IPMI functionality. IPMI 2.0 is a major market initiative and [the beneficiary's] specialized knowledge of this product line is valuable to [the petitioner's] competitiveness in the market place.

[The beneficiary] possesses specialized knowledge of IPMI 2.0 which can only be gained through prior experience with [the petitioner]. He received an intensive thirteen week training program on IPMI 2.0 specifications and interfaces. . . . [The beneficiary's] experience includes design, coding and unit testing of IPMI LDAP Proxy Service, this will run as a service in Windows and as daemon in Linux, providing user authentication login requests for IPMI based Baseboard Management controllers using the login credentials from a LDAP Directory service. [The beneficiary] also has experience with ICON Interactive Configuration for configuring the BMC using RedHat Enterprise Linux Advanced Server 4.0 32bit and

64bit and SLES 9.0 32 bit and 64 bit; FWUpdate Utility and SysConfig Utility. These projects represent significant assignments which have enhanced [the petitioner's] productivity and competitiveness in the IT marketplace.

The petitioner further described the beneficiary's proposed duties in the United States as follows:

[The beneficiary's] proposed position of Systems Software Engineer in the United States will entail applying his specialized knowledge of IPMI 2.0 to significant assignments critical to the company's continued success in the international IT marketplace. He will be responsible for complex product design and systems analysis based upon his advanced knowledge of [the petitioner's] proprietary software, firmware and hardware products and internal procedures. Specifically, he will continue to develop and test the IPMI family of products. [The beneficiary's] advanced knowledge of IPMI cannot easily be taught to other individuals, as his advanced training represents a significant investment by [the petitioner].

The petitioner submitted a copy of the beneficiary's resume, which indicated that he has "11 months experience in developing IPMI Firmware and utilities," and provided brief descriptions of two projects to which he has been assigned since joining the foreign entity. The resume indicated the beneficiary's experience in C and C++ programming languages, Windows 2003 server, and the DOS, Windows and Linux operating systems. The petitioner also submitted a letter from the foreign entity confirming the beneficiary's experience as follows:

[The beneficiary], System Software Engineer, has undergone intensive and specialised [sic] training in IPMI, a contemporary technology for PC management, over a period of 13 weeks. [The beneficiary] is part of the core team trained in IPMI 2.0 standard. He has worked in key customer projects and has acquired skilled knowledge.

The petitioner provided a copy of the beneficiary's training schedule, indicating that he completed 11 weeks of full-time training in IPMI from June 7, 2004 through September 3, 2004. The training schedule provided a detailed list of topics covered during each week of training. Finally, the petitioner submitted information regarding the IPMI specification and the petitioner's Platform Management solution based on the IPMI 2.0 specification.

On August 16, 2005, the director issued a request for additional evidence. The director advised the petitioner that the evidence submitted was insufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field, noting that "mere familiarity with an organization's products or services," does not constitute specialized knowledge as defined by the regulations. The director referenced a 1994 legacy Immigration and Naturalization Service memorandum from then Acting Executive Associate Commissioner James A. Puleo, and stated that an alien would be considered to possess specialized knowledge if it was shown that "the knowledge is different and advanced from that generally held within the industry," and if the knowledge is shown to be critical to the petitioner's proprietary interests, and not merely knowledge that would enable them to produce a product or provide a service. James A. Puleo, Acting Exec. Assoc. Comm., Office of Operations, Immigration and Naturalization Service, *Interpretation of Special*

*Knowledge* (Mar. 9, 1994) ("Puleo memorandum"). Accordingly, the director instructed the petitioner as follows:

You 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 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.

In a response dated September 12, 2005, counsel for the petitioner asserted that the beneficiary possesses advanced knowledge of the petitioner's IPMI family of proprietary firmware products. Counsel asserted that this knowledge is "not generalized knowledge but very specific, technical information about [the petitioner's] products, process and internal procedures which constitutes private, closely-held 'trade secret' material."

Counsel further explained the beneficiary's eligibility as follows:

[The beneficiary] has acquired unique knowledge of [the petitioner's] proprietary products which is not held by others in the industry because it relates to the internal technical underpinnings of corporate products. The Beneficiary has undergone an extensive three month training course of IPMI (see, Exhibit 2, training certificates, which were also included in the initial package). Additionally, the Beneficiary received four months of hands-on task experience, prior to being assigned to individual projects. The seven month training process represents a significant investment by [the petitioner] and it would be difficult to transfer this knowledge to another. This is in-house training given only to [the petitioner's] employees.

Of the approximately 108 employees of [the foreign entity], only nine engineers are currently trained on IPMI. [The beneficiary's] hands-on experience with IPMI includes development of a framework for configuring the BMC; development of a prototype for user authentication login requests from the IPMI based BMC using login credentials from the LDAP Directory Service; customization of the One-Boot Flash Update Utility so that it will update the BMC Firmware in DOS Windows and Linux; updating the ESB2 using similar FW Commands used by DOS FWPIAUPD Utility; updating the PIA; updating the FW with hex images that contain Boot Block, PIA Op Code and EFS; removal of usage of LANDesk Driver in Linux for communicating via KCS, porting the Open SSL to run in DOS and integrating this with SysConfig so that SysConfig generates the keys and certificate and uploads them into the ESB2; adding support for new Advanced Firmware Configurations such as Firewall, VLAN, TPT and TLS in SysConfig utility.

Counsel further asserted that the beneficiary's proposed position in the United States "would entail applying his advanced knowledge of IPMI to projects critical to the company's continued success in the highly competitive global computer industry." Counsel emphasized that the petitioner "is not a contractor, 'job shop,' or placement company," but rather a software, firmware and hardware developer that creates and provides its products to its clients.

Counsel concluded that the beneficiary meets the definition of an employee who possesses specialized knowledge in accordance with the above referenced Puleo memorandum, in that he: (1) possesses knowledge that is valuable to the employer's competitiveness in the market place; (2) possesses knowledge which, normally, can be gained only through prior experience with that employer; and (3) possesses knowledge of a product or process which cannot be easily transferred or taught to another individual. Counsel emphasized that the Puleo memorandum express states that "the statute does not require that the advanced knowledge be narrowly held throughout the company" and that "there is no requirement . . . that the alien's knowledge be . . . not commonly found in the United States labor market."

In support of its response to the director's request for evidence, the petitioner re-submitted a copy of the beneficiary's training record and a product brochure describing the petitioner's IPMI Firmware Solution.

The director denied the petition on September 27, 2005, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity. The director acknowledged the position description submitted for the beneficiary, but noted that the described duties "do not appear to be significantly different from those of any other System Software Engineer." The director found "no evidence that the duties of the proffered position are so specialized that they cannot be performed by someone with related skills," therefore the director determined that the petitioner failed to establish that the proposed duties warrant the expertise of someone possessing truly specialized knowledge.

The petitioner timely filed the instant appeal on October 19, 2005. On appeal, counsel for the petitioner asserts that the director's conclusion was reached in a conclusory manner with no explanation as to why the petitioner's evidence failed to establish the beneficiary's eligibility for the classification sought. Counsel asserts that the decision does not conform to statute, regulations or existing case law. Counsel specifically objects to the director's conclusion that the specialized knowledge requirements were not met "because the petitioner did not supply evidence showing that another System Software Engineer, or someone with 'related skills' in the company or in the industry, could not perform the job duties." Counsel relies on the Puleo memorandum, and again emphasizes that it expressly states that the statute does not require that advanced knowledge be narrowly held throughout the petitioning company, or that the alien possesses knowledge that is not commonly found in the United States labor market.

Counsel emphasizes that the petitioner "is a large, multinational technology company which develops and provides its proprietary copyright protected hardware, software and firmware products to its clients." Counsel asserts that IPMI 2.0 is a "major market initiative" and the beneficiary's knowledge of the product line is valuable to the petitioner's competitiveness in the marketplace. Counsel states that the offered position entails performing complex product design and systems analysis based upon the beneficiary's specialized knowledge of the company's proprietary software products. Counsel further explains:

Experience in AMI IPMI 2.0 is product specific and is available only to engineers working with [the petitioner] on live projects. This knowledge amounts to "trade secrets." To protect its intellectual property and in recognition of the specialized knowledge possessed by the Beneficiary, [the petitioner] required that the Beneficiary execute a Non Disclosure

Agreement and Employee Confidentiality and Invention Assignment Agreement on June 2, 2004.

This evidence further establishes that the Beneficiary has acquired unique knowledge of [the petitioner's] proprietary products which is not held by other system software engineers or persons with related skills in the industry because the knowledge relates to the internal technical underpinnings of the corporate products. AMI IPMI 2.0 expertise is obtained through internal training available only to [the petitioner's] employees and execution of projects for [the petitioner's] customers and hence this specialized knowledge is attainable only through prior experience directly with [the petitioner's] proprietary products and through extensive high-level training and prior experience, and certainly is not readily available in the marketplace. In fact this expertise is why [the petitioner's] customers hire [the petitioner] – it is the source of these products and technical support. The Beneficiary would be coming to the United States to execute projects using his advanced knowledge of [the petitioner's] proprietary products, attained through his work on live [company] projects. Because this specialized knowledge can only be acquired through prior project experience with [the petitioner's] proprietary products and high level training by [the petitioner], the knowledge held by the Beneficiary is expertise beyond the ordinary and beyond what is commonly held in the field. Of the approximately 108 employees of [the foreign entity], only nine engineers are currently trained on AMI IPMI 2.0. Thus, the Beneficiary's knowledge is beyond what is held by other employees of the Petitioner. This advanced knowledge, which is essential to the employer's continued competitiveness in the platform management marketplace, is not readily available in the U.S. marketplace (or anywhere else in the world, for that matter).

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The Beneficiary's advanced knowledge makes him a key employee whose services are needed to support the petitioner's continued success in the highly competitive international IT industry. . . . [The petitioner] hires and trains its Engineers in its products, processes and procedures. Their specialized knowledge cannot be found in the marketplace.

Counsel cites *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982) to stand for the proposition that specialized knowledge is found when it relates to the proprietary interests of the business and concerns skills or knowledge not readily available. Counsel asserts that "all the Beneficiary's work is at a high level and is solely related to [the] Petitioner's proprietary products." Counsel contends that the beneficiary's knowledge is different and advanced from that generally held within the industry, and was acquired "through an extensive training course, months of pre-project hands-on experience, and extensive experience with proprietary projects."

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), that the beneficiary has been employed by the foreign entity in a position involving specialized knowledge for at least one year in the three years preceding the filing of the petition, or that the

intended position requires an employee with specialized knowledge. 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 point, 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).

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 suggests that U.S. Citizenship and Immigration Services (USCIS) is bound to base its decision on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist USCIS 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. The AAO will weigh guidance outlined in policy memorandum 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)).<sup>1</sup> As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982),

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<sup>1</sup> 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. 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.

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 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 his knowledge as more advanced or distinct among system software 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 memorandum, which the AAO notes also allows USCIS 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 memorandum, *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, USCIS 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, as correctly noted by counsel, 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. 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 USCIS 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 memorandum, *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 USCIS 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 a general description of the beneficiary's proposed role as a system software engineer that conveys little understanding of the type or extent of specialized knowledge that would be required to successfully perform the purported job duties. The petitioner simply stated that the beneficiary will apply "his specialized knowledge of IPMI 2.0 to significant assignments critical to the company's continued success in the international IT market place," and will "continue to develop and test the IPMI family of products." The petitioner provided no information regarding the specific "significant assignments" or projects that the beneficiary will join or the importance of his role within these assignments. When asked by the director to describe how the beneficiary's knowledge of the petitioner's products or other interests is "uncommon, noteworthy, or distinguished by some unusual quality," the petitioner responded by emphasizing the beneficiary's experience with the overseas office. However, other than implying that the beneficiary's duties in the United States will be similar to those he performs for the foreign entity, it is unclear what specialized knowledge the beneficiary possesses or how this knowledge would be applied in the proffered position. 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)).

The petitioner's evidence with respect to the beneficiary's foreign employment does not distinguish his knowledge as more advanced or distinct among other system software specialists employed by the foreign or U.S. entities or by other unrelated companies. The petitioner emphasizes that the beneficiary possesses specialized knowledge of IPMI 2.0 that can only be gained through prior experience with the petitioning organization. However, IPMI 2.0 is an industry standard specification that has been adopted by approximately 200 companies in the personal computer industry; it was not developed by nor is it exclusive to the petitioning organization.<sup>2</sup> The petitioner has developed a "family" of products that are based on the IPMI

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<sup>2</sup> See Intel Corporation, "Intelligent Platform Management Interface: Industry Promoters, Adopters and Contributors", available at <http://www.intel.com/design/servers/ipmi/adopterlist.htm>, (accessed on April 24, 2007).

2.0 specification, however, the petitioner did not explain how these products differ from other IPMI 2.0 products developed by other companies and based on the same standard specifications.

Absent evidence that the IPMI 2.0 firmware developed by the petitioner is significantly different from that developed by other companies that develop similar products, the AAO cannot conclude that the beneficiary's knowledge of the petitioner's IPMI 2.0 product family alone constitutes specialized knowledge. The skills used by the beneficiary in his foreign assignments include such common technologies as DOS, Windows and Linux operating systems, and C and C++ programming languages. These would reasonably be familiar to many software engineers working in the beneficiary's specialization.

The record does not establish the significance of the beneficiary's contributions to the development of the company's IPMI 2.0 firmware, but overall does not suggest that he played a leading or particularly advanced role in such product development, or that he is being transferred to the United States as "key personnel." The petitioner claims that the beneficiary's knowledge is advanced because only nine out of 108 engineers in the Indian entity have received specialized training in IPMI 2.0. However, the petitioner has not provided information regarding the number of employees of the U.S. company who have the same knowledge, or the number of employees who have completed the same training program. The petitioner has therefore not provided a sufficient basis for comparing the beneficiary's knowledge to that generally possessed by similarly employed workers within the petitioner's international organization. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Further, although the petitioner indicates that the beneficiary's knowledge is advanced compared to other employees of the foreign organization, the record shows that the beneficiary joined the foreign entity immediately upon graduating from college and completed seven months of classroom and hands-on training before he was able to be assigned to individual projects. The AAO recognizes that the beneficiary completed a 13-week training program in IPMI technologies, but it is unclear to what extent the training provided general knowledge in the IPMI 2.0 specification, or how much of the training was truly specific to the petitioning organization's IPMI family of products. Since there is no evidence that the beneficiary had any experience in IPMI prior to joining the foreign entity, it is reasonable to assume that his training would necessarily include a number of basic, general topics required to familiarize him with the industry specification and related technologies. It is impossible to determine based on the current record whether a system software engineer with extensive professional experience in IPMI would actually require the same amount of full-time classroom and hands-on training in IPMI completed by the beneficiary as a recent college graduate. It is evident that the three months of training provided to the beneficiary imparted him with the knowledge and skills necessary to perform duties in his assigned specialty, but not necessarily knowledge that could be considered "specialized" or "advanced." The petitioner has not adequately supported its assertion that it would be difficult to transfer the beneficiary's knowledge to another employee.

The petitioner further indicated that the beneficiary received four months of "hands-on task experience," prior to being assigned to individual projects." The petitioner offered no description of these "hands-on" tasks, no indication of how they contributed to the beneficiary's claimed "advanced" knowledge, and no explanation as to how many employees received similar "hands-on" training in IPMI 2.0. Finally, the foreign entity stated

that the beneficiary is "part of the core team trained in IPMI 2.0 standard," but failed to describe the size of this team or the beneficiary's specific role within it, or how the India-based team fits into the overall product development function. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not adequately substantiated its claim that the beneficiary's possesses "advanced" knowledge of the company's processes, procedures and tools. Rather, as discussed further below, the record shows that the beneficiary possesses only limited project experience that would not appear to establish his knowledge as "advanced."

The record shows that the beneficiary spent seven months in training, and had only been assigned to individual projects as a system software engineer for approximately seven months at the time the petition was filed in July 2005. Overall, the record establishes that the beneficiary possesses some level of knowledge of the petitioner's products that is perhaps not commonly found in the industry. However, if USCIS 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, and regardless of the similarity of the product to those developed by other companies, would be deemed to possess "advanced" knowledge and would qualify for this visa classification. While the beneficiary may possess some knowledge not possessed by other software 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 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. 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 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. *Id.*

Finally, although not addressed by the director, the record does not establish that the beneficiary has been employed by the foreign entity in a position involving specialized knowledge for the requisite time period. Section 101(a)(15)(L) of the Act states:

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

In order to "continue to" render services in a capacity that is managerial, executive, or involves, specialized knowledge, it is necessary for the beneficiary to have been employed in one of these qualifying capacities during his or her employment abroad. The evidentiary requirements for the filing of an L-1 petition, as set forth by the regulations at 8 C.F.R. § 214.2(l)(3)(iv), further confirm the petitioner's burden to establish that

the beneficiary was employed abroad in a qualifying capacity. Specifically, the petitioner is required to submit "evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States."

The petitioner clearly and repeatedly stated that the beneficiary was required to complete seven months of classroom and hands-on "task experience" prior to being assigned to an individual project. The beneficiary was employed by the foreign entity for approximately 14 months at the time the petition was filed. Therefore, based on the evidence submitted, he had been fully performing his duties as a system software engineer for only seven months prior to the filing of the petition. Accordingly, it must be concluded that the beneficiary's fourteen months of employment with the foreign entity did not involve one full year of employment which could be considered to be at the level of a "specialized knowledge" employee. Even if the beneficiary's period of training could be considered to "involve" specialized knowledge, as discussed above, the L-1B visa classification was not intended for employees who are minimally qualified to perform their stated duties.

It must be noted that the regulations require evidence that the qualifying year of employment be in a managerial or executive capacity, or in a capacity requiring specialized knowledge. Therefore, if some portion of the foreign employment is not in a qualifying capacity, an employee who has been employed with a qualifying entity for many years may not meet this eligibility requirement. A determination as to whether a beneficiary was employed *in a qualifying capacity* for the requisite one-year period must necessarily be made on a case-by-case basis. In this case, the petitioner's stated seven-month training requirement for the type of position offered effectively makes it impossible to find that the beneficiary, after fourteen months of employment, could have been employed in a position involving specialized knowledge for one full year.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In sum, the beneficiary's duties and technical skills demonstrate knowledge that is common among system software engineers working in the petitioner's industry. 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 petitioner's products or processes are substantially different from those used by other companies developing products that support the IPMI 2.0 specification. The AAO 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 possessing special or advanced knowledge or as a "key employee," 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.

Furthermore, the petitioner has failed to establish that the beneficiary was actually employed for one continuous year after completing the training required to perform the claimed specialized duties competently and independently, much less established that the beneficiary's training and experience have resulted in advanced knowledge of such procedures which would elevate him to the level of key personnel. If an employee with 14 months of experience could be deemed to possess specialized knowledge, then all employees who had completed the minimum training with the foreign entity would possess specialized knowledge under the petitioner's proposed rubric. Indeed, the beneficiary in this matter would appear to be typical of an employee with 14 months of experience in the petitioner's organization. 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.

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 memorandum, specifically, that he possesses knowledge which normally can only be gained through prior experience with the foreign employer, and knowledge that cannot easily be taught or passed on to other individuals. 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.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F. Supp. at 16. The petitioner has not established that the beneficiary was employed by the foreign entity in a position involving specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For these reasons, the appeal must be dismissed.

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.