

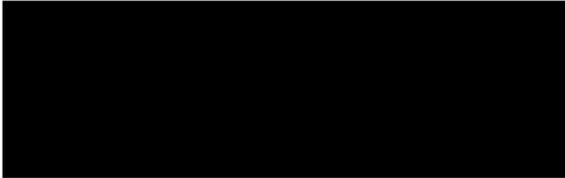
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**U.S. Citizenship
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File: WAC 05 800 54280 Office: CALIFORNIA SERVICE CENTER Date: JUN 04 2007

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, is engaged in the provision of software design, development and consulting services. It states that it is the parent company of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as a consultant for a three-year period.

The director denied the petition on November 18, 2005, concluding that the petitioner did not establish that the position offered to the beneficiary requires the services of an individual possessing specialized knowledge, or that the beneficiary possesses 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 beneficiary possesses specialized knowledge, that the knowledge attained by him is uncommon in his field, and that the U.S. position requires the beneficiary's specialized knowledge. Counsel submits a brief and additional evidence 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 electronically on August 17, 2005. In a supporting letter dated September 1, 2005, the petitioner described the beneficiary's proposed duties as a consultant as follows:

- Plan, develop & test Business Intelligence programs, using commercial off the shelf business intelligence tools and web technologies.
- Design, development, implementation & testing of logical & physical data models, warehouse architecture, data cleansing & extraction, data transformation, ETL loading processes, using commercial off the shelf ETL tools and custom applications.
- Consult the user to set operating procedures and clarify program objectives.
- Write code following given standards and carry out tests per the plan.
- Provide maintenance support upon completion of installation.
- Develop documentation for application modules, users' instructions and technical reference.
- The minimum requirement for this position is a bachelor degree and proficient experience using proprietary Business Intelligence Programs.
 - Business Intelligence & Data Warehouses
 - E-Business Technologies
 - Training

The petitioner indicated that the beneficiary would be required to work on the implementation of business intelligence and data warehousing solutions for multiple clients in the Los Angeles, California area. The

petitioner explained that the U.S. company is an information technology firm specializing in delivering customer-focused Business Intelligence and data warehouse solutions and services.

With respect to the beneficiary's specialized knowledge, the petitioner submitted that most software engineer positions within its organization are specialized in nature within the statutory definitions. The petitioner noted that employees who are assigned to onsite/offsite teams must receive "relevant training and attain considerable experience" with the company prior to becoming part of a team, and that newly-hired software engineers are not eligible to be part of such teams until they have acquired training and experience. The petitioner further asserted that "since acquiring knowledge of [the petitioner's] processes and procedures is a significant factor given the risks involved in not having such knowledge, attainment of such knowledge about [the petitioner's] methodologies is considered specialized."

The petitioner explained that it implements the MicroStrategy Business Intelligence platform, a product used by many of the top companies in the world in various industries. The petitioner further explains the significance of Business Information within the scope of the petitioner's business as follows:

The technologies used to implement the MicroStrategy platform are technically specialized and complicated in nature. Certificates, training and understanding of process are a pre-requisite for not only MicroStrategy but also [the petitioner], as MicroStrategy Reseller and Authorized Training Partner. There are few organizations that can bring the quality of service and the technical expertise to implement such large-scale programs.

[The petitioner] not only develops these novel technologies, but also pursues emerging trends by building integrative tools which make some of these technologies compatible with otherwise non-compatible platforms of clients in various industries. Our partnerships and understanding of the product is crucial to the success of MicroStrategy products and its future technologies. Our ability to implement successful programs helps companies increase efficiency, productivity and customer profitability by identifying trends and delivering answers contained within their warehouse of data.

The petitioner noted that its team members develop specialized skills in understanding and solving complex, client specific problems, and that its solutions "tend to be specialized custom solutions based on our common reference architectures [and] our methodology." The petitioner stated that every employee undergoes classroom and on-the-job training, but that, even among employees with the same functional job title, the specific training modules completed, and the contents of training vary significantly depending on an employee's assignments. The petitioner described the beneficiary's specific training background as follows:

Since the commencement of his employment with [the foreign entity] in November 2002, the Beneficiary has been part of its offshore development team in India, working on BI and Datawarehousing Technology projects as detailed. As a Software Engineer Specialist, the Beneficiary has undergone both classroom training and on-the-job training in effectively utilizing tools and processes of [the petitioner] as they related to the projects that he has been a part of.

Because of his client-specific experience with Business Intelligence and Data Warehouse projects, he has developed a specialized knowledge of [the petitioner's] computer software production and its application with an advanced level of [the petitioner's] processes and procedures as they related to BI and DW. [The petitioner] has carefully designed [the Beneficiary's] training program keeping in mind the specific projects he would be working and training on.

The petitioner further described the beneficiary's "special or advanced duties" as follows:

[The beneficiary is a professional Lean Specialist whose particular knowledge and experience in developing and using this technology is absolutely very critical to the success of our projects. Even through the technology is developed remotely, its implementation, installation and finally, training on its application at our clients' sites here in [the] US, is particularly inevitable. This particular phase in having an effective technology and application implementation is possible only with [the beneficiary] and several others who have acquired the knowledge and experience with this technology while working with [the petitioner]. They alone have the background and training and can pass on this knowledge by implementing the technology and training others in it. This accounts for the choice of [the beneficiary] whom we know is among only a few most appropriate individuals to deploy this technology and training our clients in [the] US who are in pursuit of excellence in the field of BI technologies.

It is important to understand that the beneficiary's knowledge is different from the rest of the market because this knowledge is proprietary to our company. In the two and half years [the beneficiary] has been helping our company define this technology and, at the same time, exploit its full potential. He has been part of the development and implementation of same as a remote resource because of his uncommon expertise and proficiency in BI technology in relation to data warehousing. He also played a key role in the design and implementation of the process. . . .

He has worked on similar Business Intelligence and Data Warehouse projects for for [sic] the project as discussed above. His pioneering effort and excellence with this technology led to his recognition and promotion to the role of technical lead and MicroStrategy at our company. . . . His prototype development efforts at [the petitioner's] own Lab devising industry specific solutions – called "Insights" – further elevated the standing of [the petitioner] in the IT industry. He also spearheaded the development of an industry specific Planning and Forecasting application based on BI technologies, a technology that is increasingly becoming valuable for our client both in Asia and North America. In this process, beneficiary and his team members became intimately knowledgeable in every aspect of these unique software technologies.

The petitioner stated that the beneficiary's expertise "is not available in the U.S. job market," and "involves our peculiar proprietary interests." The petitioner noted that eligible trainees for its Business Information and

data warehousing technologies typically have two or more years of industry experience "with a good fundamental understanding of business functionalities and software experience on various database platforms." The petitioner stated that participants in its training program are exposed to business communications and customer etiquette, and "a thorough understanding of the technology."

The petitioner noted that it currently employs 33 employees at its California location, including seventeen foreign nationals on nonimmigrant visas, two of whom have L-1B visas. The petitioner noted that there are other employees with similar experience at the location where the beneficiary will work, but that these employees "are performing job duties different from those for which we need the beneficiary's services." The petitioner concluded that the beneficiary possesses "in depth and specialized knowledge on [the petitioner's] methodology and procedures" that qualifies him for the position offered.

The petitioner submitted documentary evidence in support of the petition, which included copies of the beneficiary's educational credentials, training certificates for professional courses completed by the beneficiary prior to joining the foreign entity, organizational charts for the U.S. and foreign entities, and company brochures describing the petitioner's services.

The director issued a request for additional evidence on September 24, 2005. The director requested, *inter alia*, additional information regarding the number of similarly employed workers with the foreign and United States entities, organizational charts for both entities, the number of foreign nationals employed at the U.S. location, including the types of visas held by each, an explanation regarding any special or advanced duties performed by the beneficiary abroad or in the United States, and an explanation as to how his duties differ from those of other workers employed by the petitioner or by other U.S. employers in this type of position.

The director also requested that the petitioner explain exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and requested that the petitioner indicate whether it is used or produced by other employers in the United States or abroad. Finally, the director requested an explanation as to how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in his field in comparison to that of others employed by the petitioner.

The petitioner submitted a response dated November 3, 2005. The petitioner re-submitted its letter dated September 1, 2005 and asserted that many of the director's requests regarding the beneficiary's specialized knowledge are addressed in the letter, including information regarding the number of employees working in similar positions, the beneficiary's special or advanced duties, the petitioner's product, the training the beneficiary will provide, and the impact the beneficiary will have on the petitioner's business. The petitioner indicated that the U.S. company now employs 52 employees, and stated that a total of nine employees hold positions which are the same as or similar to that offered to the beneficiary. The petitioner submitted an "employee status report" listing 31 employees who work at the beneficiary's proposed location as nonimmigrant workers, including nine L-1B visa holders identified as programmer analysts and 22 H-1B visa holders who are employed in the positions of computer programmer, programmer analyst, software engineer, senior software engineer, senior financial analyst, finance manager, business analyst, software engineer, and market research analyst.

The director denied the petition on November 18, 2005, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge, or that the beneficiary had been or would be employed in a position requiring specialized knowledge. The director noted that the petitioner's qualifications were vaguely described, and that the petitioner's response to the request for evidence did not provide any new insight into the specialized skills or knowledge possessed by the beneficiary. The director observed that "the petitioner primarily claims that the beneficiary possesses the specialized knowledge because he/she has been trained on the proprietary [Business Information] and data warehousing technologies."

The director determined that the petitioner had failed to establish that the beneficiary's duties with the foreign company required specialized knowledge, noting that the position description provided was not sufficiently specific. The director further found that the petitioner did not demonstrate that the beneficiary's knowledge is uncommon or advanced, as the petitioner did not provide any information pertaining to other IT consultants employed by the company, or attempt to distinguish the beneficiary's knowledge, work experience or training from that of its other employees. Finally, the director noted that the Business Information platform implemented by the petitioning company was actually developed by an unrelated company, MicroStrategy. The director found that the implementation processes developed by the petitioner are standard processes that all employees of the petitioning company utilize and receive training on. The director further determined that the petitioner failed to demonstrate how the petitioner's processes are different from other processes utilized by similar companies that implement the MicroStrategy Business Information platform.

The director concluded that the petitioner did not demonstrate that the beneficiary's knowledge constitutes an advanced level of knowledge of the processes and procedures of the petitioning organization, or that his knowledge is substantially different from, or advanced in relation to, that of an information technology consultant employed by any similar consulting company.

On appeal, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge and that the knowledge obtained by him while employed with the foreign entity is uncommon in his field of practice. Counsel further attempts to clarify the beneficiary's claimed specialized knowledge as follows:

The beneficiary has been involved in the projects dealing with Business Intelligence (BI) and Data Warehousing (DW) technologies from the conceptual stage. [The petitioner] utilizes indigenously designed tools, methodologies, procedures and operates them with other high ended software applications. The Beneficiary's [sic] has designed tools and procedures in relation to this technology which are not available to other companies in the IT industry. For example the beneficiary's prototype development effort at [the petitioner's] own lab, devising industry specific solutions called – "Insights" further elevated the standing of [the petitioner] in the IT industry. The beneficiary also spearheaded the development of an industry specific planning & forecasting application based on BI technologies. . . .

The beneficiary and his team are the only professionals with detailed information on the applications mentioned above, which is the direct result of [the petitioner's] procedures and processes. The expertise gained by the beneficiary in the process of developing, modifying

and technologies, is not available in the U.S. job market and involves peculiar proprietary interest of the beneficiary.

Counsel asserts that the beneficiary's involvement in "devising products and services related to the mentioned technology is specialized." Counsel further contends that the beneficiary's work experience and training "truly signifies that the beneficiary's knowledge is uncommon or advanced." Counsel acknowledges that every employee of the petitioning company undergoes training, and asserts that the beneficiary, as a software engineer specialist, has undergone both classroom and on-the-job training to prepare him to effectively utilize the petitioner's tools and processes as they related to his specific project assignments.

Counsel states that the "typical training program" for a software engineer specialist working on Business Intelligence and data warehousing projects includes the following modules or topics: (1) understanding business functionalities; (2) software experience on various database platforms; (3) interaction techniques with users and end users; (4) devising robust solutions which will aid the decision making process; (5) insight into current operations; (6) exposure to business communications and customer etiquette; and (7) understanding the application, the program, and assignment to work on a project. Counsel asserts that the beneficiary has undergone training in all of these modules, and notes that only a limited number of software engineers working on projects in the Business Intelligence and data warehousing industry are offered this "hybrid" training program. Counsel asserts that the knowledge is not held commonly throughout the organization, but it is truly specialized, advanced, and based upon the beneficiary's background, experience with the petitioning organization, and specific training he has received.

Finally, counsel addresses the director's observation that the "Business Intelligence" platform implemented by the petitioning company was actually developed by an unrelated company, MicroStrategy, and therefore is not specific to the petitioning organization. Counsel emphasizes that the technologies used by the petitioner to implement the MicroStrategy platform are "technically specialized and complicated in nature." Counsel states that the petitioner builds "integrative tools" which make some of these technologies compatible with otherwise non-compatible platforms for clients in various industries, and specializes in developing data warehousing solutions based on the Business Intelligence platform. Counsel asserts that the petitioner's solutions are therefore "specialized, custom solutions based on the common reference architectures and methodology for every client."

Counsel concludes that it "is difficult to determine what tools and procedures are used by other companies in the IT industry that offer similar services as the petitioner the reason being such tools and procedures are mostly internal and proprietary within the company, and protected by copyright and patent laws." Counsel asserts that the petitioner cannot describe or provide evidence to demonstrate that the internal tools and processes it utilizes are substantially different from or advanced compared to those utilized by other companies.

In support of the appeal, the petitioner re-submits its initial supporting letter dated September 1, 2005, and its response to the director's request for evidence. Counsel states that the petitioner is submitting at exhibit 4 "the beneficiary's training certificates, which certify that the Beneficiary has undergone training at [the foreign entity]" in the above referenced training modules. The attached exhibit consists of one letter from the foreign

entity, dated November 11, 2002, indicating that the beneficiary was offered the position of "Business Intelligence Trainee" with the foreign entity for a probationary period of six months. According to the letter, the beneficiary would be training on "Data Warehousing concepts and related tools" for a period of six to eight weeks, before commencing regular work assignments.

On review, counsel's assertions are not persuasive. The petitioner has not submitted sufficient evidence to establish that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D), or that the intended position requires an employee with specialized knowledge.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* In addition, it is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

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

Id. at 53. As discussed below, 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.

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

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, the term "specialized knowledge" is inherently a relative idea which cannot have a plain meaning. 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

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

Therefore, based on the intent of Congress in its creation of the L-1B visa category, even if the petitioner were to demonstrate that the beneficiary has received some specialized training, acts as a specialist, or performs

highly technical duties, this showing will not necessarily establish eligibility for L-1B intracompany transferee classification. The petitioner must submit evidence to show that the beneficiary has "special" or "advanced level" knowledge within the company and is being transferred to the United States as a "key employee." This has not been successfully demonstrated in the instant case, where the beneficiary appears to be one among a large number of the petitioner's employees who possesses similar training and knowledge.

In the instant matter, the petitioner submitted a description of the beneficiary's proposed employment in the United States entity. However, the petitioner has not documented that the job duties to be performed require specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). The beneficiary's job description does not distinguish his knowledge as more advanced or distinct among other software consultants employed by the foreign or U.S. entities or by other unrelated companies. The beneficiary's duties involve: planning, developing and testing Business Intelligence programs using "commercial off the shelf business intelligence tools and web technologies"; development, implementation and testing of data warehouses and related applications using "commercial off the shelf ETL tools" and "custom applications"; requirements gathering; writing code and carrying out tests; providing maintenance support; developing documentation for users; and providing training to clients. The petitioner has not described the technological environment in which the beneficiary has been and would be working, other than noting that the company is a reseller and authorized training partner of MicroStrategy's Business Intelligence software solutions. The ability to implement software solutions developed by an unrelated company, and to utilize widely available "commercial off the shelf" tools and web technologies cannot be equated to specialized knowledge of the petitioning organization. The petitioner's description of the beneficiary's duties does not distinguish his knowledge or experience from that of any other software consultant who is experienced in implementing customized Business Intelligence and data warehousing solutions for clients.

The petitioner noted that over 90 percent of Fortune 2000 companies deploy or are planning to deploy data warehouses. Accordingly, in general, the knowledge and skills required to work on a consulting team implementing Business Intelligence and/or data warehousing technologies, while likely complex and technically sophisticated, can not be deemed uncommon in the petitioner's industry. The petitioner attempts to distinguish itself and its employees by noting that the company "designs and develops Data Warehouse and Business Intelligence solutions for these companies using its home grown distinctive specialized variation and knowledge of these technologies." The petitioner suggests that knowledge of these vaguely-defined "processes" is essential for performance of the beneficiary's job duties, and also differentiates his knowledge from that which is generally known by similarly employed professionals in the beneficiary's field.

However, while the petitioner and counsel have repeatedly asserted that the beneficiary is knowledgeable of processes, standards and tools that are proprietary and unique to the petitioner and its foreign parent company, the petitioner has neither identified the petitioner's claimed proprietary processes or tools with any specificity, nor established that the beneficiary actually possesses the claimed knowledge as a result of his training or work experience. Thus the record does not demonstrate that knowledge of these procedures and tools alone constitutes specialized knowledge, or that the beneficiary possesses advanced knowledge of these tools and processes. The petitioner's only attempt to distinguish the beneficiary's knowledge as advanced or beyond that of other employees was a brief reference to his contribution to the prototype development effort of "industry specific solutions" known as "Insights." The petitioner neither describes the beneficiary's specific role in

developing "Insights," nor provides any additional information or explanation regarding the significance of such developments, particularly with respect to the applicability of such knowledge to the duties to be performed in the United States. 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)).

Moreover, upon review of the initial evidence, the director specifically advised the petitioner that the evidence submitted was insufficient to establish the beneficiary's eligibility as an intracompany transferee with specialized knowledge. The director clearly instructed the petitioner to submit additional explanation regarding any special or advanced duties performed abroad and those to be performed in the United States, and how they differ from those performed by the petitioner or other U.S. employers. The director also specifically requested clarification as to what equipment, system, product, technique or service the beneficiary has specialized knowledge of. In response, counsel referred the director to the petitioner's twelve-page letter dated September 1, 2005, which was submitted in support of the petition and already found to be inadequate by the director.

While lengthy, the petitioner's letter does not contain the level of detail regarding the beneficiary's experience, training or claimed specialized knowledge to establish his eligibility for the benefit sought. For example, the petitioner stated that it is difficult for the company to identify which positions within its organization would require the services of a person who possesses specialized knowledge, and noted that not all individuals holding the same occupational job title would be considered to possess such knowledge. The petitioner suggested that the beneficiary's position is specialized because he "has a well defined knowledge of [the petitioner's] tools, methodologies, processes and procedures," but then appeared to contradict itself by stating that "most software engineer positions within the organizational [sic] overseas and in the United States are specialized in nature within the definition of the Immigration and Nationality Act." The petitioner's letter consists of mostly generalized statements regarding the petitioner's products, and the beneficiary's training and experience. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 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). 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).

The petitioner's processes and tools, while specific to the company, have not been shown to be significantly different from those used by other information technology consulting firms, which necessarily also develop internal methods, procedures, standards, project methodologies, and internal applications in order to effectively plan and manage similar client Business Information and data warehouse projects. As discussed further below, the petitioner did not specify the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it is impossible for the AAO to assess whether these

processes are particularly complex or different compared to those utilized by other companies in the industry, or whether it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. Any consulting company engaged in implementing the MicroStrategy Business Intelligence platform and "commercial off the shelf" solutions would reasonably have its own processes and tools for the completion of projects. However, it has not been established that the petitioner's processes are anything more than customized versions of standard practices used in the software consulting industry. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

The record is also deficient with respect to describing and documenting the training received by the beneficiary. The petitioner has indicated that every employee of the company undergoes on-the-job and classroom training, noting that the specific training modules and content will vary depending on an employee's job function and the projects to which he or she has been assigned. The petitioner states that the beneficiary has undergone such classroom and "on-the-job training in effectively utilizing tools and processes . . . as they relate to the projects that he has been a part of," and noted that the beneficiary's training program had been "carefully designed." Clearly, the petitioner's vague statement was of little assistance in establishing that the beneficiary's training has given him an advanced knowledge of the petitioner's processes or tools, or knowledge that was in any way different from that possessed by the petitioner's average employee. The petitioner provided no information regarding the type and length of training its employees receive, nor did it provide evidence that the beneficiary actually completed the training at all, much less received more advanced or intensive training or experience compared to his peers within the company.

Accordingly, the director specifically requested that the petitioner address how the beneficiary's training or work experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field. In response, counsel again referred the director to the petitioner's September 1, 2005 letter. Again, 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).

On appeal, counsel asserts that the beneficiary has completed the "typical training program" for a software engineer specialist working with Business Intelligence and data warehousing programs, and lists seven "training modules" included in the program. Counsel states that the beneficiary completed training in all seven modules in the "typical training program," and indicates that not all of the petitioner's software engineers working in similar positions are offered all of these modules. Counsel contends that only a limited number of software engineers working in the beneficiary's specialty are offered such "hybrid" training, and asserts that as a result of his training, the beneficiary has "uncommon expertise." It appears that counsel is simultaneously representing the training program completed by the beneficiary as both "typical" and atypical for a software engineer in his specialty. Regardless, neither counsel nor the petitioner offers any explanation with respect to the "hybrid" training purportedly completed by the beneficiary, and the brief descriptions of the seven training modules are too vague to establish that such training would have imparted specialized or advanced knowledge specific to the petitioning organization. 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 possesses "advanced" knowledge of the company's processes, procedures and tools. Although the petitioner indicated that it was attaching certificates evidencing the beneficiary's completion of training in the above-referenced training modules, the only evidence attached indicated was the above-referenced offer letter from the foreign entity, indicating that the beneficiary would be required to complete six to eight weeks of training in data warehousing concepts and tools immediately upon joining the company in November 2002. This letter is not sufficient to establish that the beneficiary completed the claimed specialized "hybrid" training, as indicated by counsel. 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 presented a confusing explanation of the amount and type of training typically required for the beneficiary's position and the type and amount of training actually completed by the beneficiary, and has therefore failed to establish that the beneficiary has completed specialized training that would equip him with an "advanced" knowledge of the petitioner's processes or technologies.

Regardless of the petition's lack of evidentiary support, the petitioner's assertions regarding the beneficiary's completion of a "typical training program" defy reason: if all similarly employed workers within the petitioner's organization receive essentially the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. 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 all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace. The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures is advanced compared to other similarly employed workers within the organization. Such a conclusion is supported by the petitioner's assertion that nine other employees at the beneficiary's proposed U.S. worksite, nearly 20 percent of the workforce, will serve in the same or similar positions.

In addition to failing to describe the beneficiary's training with the foreign company, the petitioner has offered very few details regarding his specific duties and assignments while employed by the foreign entity. The petitioner indicated that he has been "part of its offshore software development team in India, working on BI and Data Warehousing Technology projects." Although the petitioner characterizes the beneficiary as among a group of employees who possess specialized knowledge as a result of their training and experience, it is not evident from the record that the beneficiary's less than three years of experience with the foreign entity at the time of filing should be equated to "special" or "advanced level" knowledge on the level of "key personnel." Absent a detailed description of his project assignments and duties, including any special or advanced duties, and documentary evidence regarding the beneficiary's training, the record does not support a conclusion that the beneficiary's knowledge differs from that of any other software engineering consultant employed by the foreign entity. The petitioner has not established that the beneficiary possesses "advanced knowledge" of the petitioner's processes or procedures as a result of his training or work experience.

Finally, even assuming that the petitioner had established that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures, there is no evidence in the record to establish that the position with the United States entity requires such knowledge. As noted above, the beneficiary will be performing

duties typical of a software consultant, using technologies and skills which are common in his profession. While it is clear that he may use the petitioner's internal systems and tools to assist in the project development process, the record does not establish that the beneficiary will be performing any duties which would require more than basic proficiency with the company's internal procedures. The petitioner has not identified the beneficiary's particular project assignment(s), nor identified any proposed duties which would require an advanced knowledge of company processes and tools. Rather, it appears that any employee who had similar experience in the beneficiary's technical specialty (i.e., Business Intelligence and data warehousing) and had completed the petitioner's internal training program could perform the duties of the offered position.

In sum, the beneficiary's duties and technical skills demonstrate knowledge that is common among software engineers providing consulting services in the information technology field, specifically, in the data warehousing specialty. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to successfully perform his job duties for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as "key personnel," nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

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

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

For these reasons, the appeal must be dismissed.

Counsel emphasizes that two "identical cases" involving other L-1B beneficiaries were approved based on the same documentation that was submitted with the instant case. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If other nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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

The 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.