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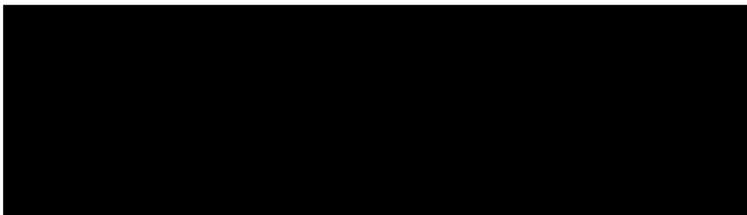
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Washington, DC 20529



U.S. Citizenship
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File: LIN 05 239 52111 Office: NEBRASKA SERVICE CENTER Date: MAR 27 2007

IN RE: Petitioner:
Beneficiary:



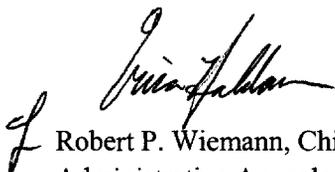
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Nebraska 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 in the position of BaaN ERP Technical Consultant 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 claims to be engaged in information processing, manufacturing, sales and service. The petitioner states that it is the parent company of the beneficiary's foreign employer, IBM Global Services IGS India Pvt. Ltd, located in India. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered to the beneficiary requires an employee with specialized knowledge or that the beneficiary possesses such knowledge.

On appeal, the petitioner disputes the director's decision and outlines the beneficiary's experience and specific specialized knowledge in the petitioner's software. The petitioner concludes that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures and therefore qualifies for the benefit sought. The petitioner submits a brief in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

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

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

The nonimmigrant petition was filed on August 12, 2005. In a letter dated August 11, 2005, the petitioner explained that the petitioner wishes to transfer the beneficiary to the United States in order to work on a project on a four-member team for a U.S. client that has outsourced the foreign company. The petitioner stated that the "primary mission of [the petitioner's] team is to support and develop the BaaN IV application. The [U.S. entity's] on-site team will interface with [the petitioner's] US team and also coordinate activities with [the petitioner's] team in India, for the successful execution of the project." In addition, the petitioner provided the following description of the beneficiary's proposed position as a BaaN ERP Technical consultant in the United States:

As BaaN ERP Technical Consultant, [the beneficiary] will be a key member of the team responsible for understanding the specific requirements from the client and architect the solutions. He will also be responsible for planning and prioritizing the application development upon consultation with the client and the delivery team in India. [The beneficiary] will be responsible for gathering and understanding the new business and technical requirements from the client, creating the technical specifications based on the requirements and facilitating the transfer of the specifications to the development team in India. He will analyze the system requirements documents. [The beneficiary] will coordinate with the client and the offshore delivery team on project tasks. He will also be responsible for performing Unit testing of the component codes in isolation and participating and supporting Systems training of the overall application, including writing and executing test cases and test plans.

In order to qualify for this position, the individual must have professional knowledge in a specific field of BaaN ERP application and specifically the BaaN IV (ERP) application. In addition[,] the individual should have knowledge of the technologies and tools that are required for the daily job duties described above. These technologies include: the International Corporation client server, Upgradation and Migration, and UNIX Scripting. Further, this position requires the specialized knowledge of the Waterfall SDLC Methodology so that future development of the application continues to follow this methodology.

In the letter dated August 11, 2005, the petitioner also stated that the beneficiary has the specialized knowledge required for the proposed position, including advanced knowledge of the BaaN IV (ERP) application. The petitioner described the beneficiary's advanced knowledge as follows:

- **The BaaN IV ERP application** – This is an Enterprise Resource Planning (ERP) application. ERP is a business management system that integrates all areas of the business, in this project
-International, including planning, manufacturing, sales and marketing. This application aid [sic] [the U.S. client] implement ERP in such activities, such as order training, inventory control, manufacturing, and customer service. The BaaN IV ERP application combines each department's own computer system into a single integrated software program that runs off of a single database so departments can share information and communicate easily. This application simultaneously serves the need of people in sales, finance, manufacturing and warehouse and each department can have access to information in other departments. The ultimate goal of this application system to help management be [sic] establishing better business practices and equipping them with the right information to make time [sic] decisions.
- **Waterfall SDLC Methodology** – This is a process model for software engineering where each phase must be completed in a strict sequence of requirements analysis, design, implementation/integration, and testing. This linear sequential model suggests a systematic, sequential approach to software development that begins at the system level and processes through software requirements analysis, design, coding and testing, integration and testing, and maintenance.

These tools, methodologies and applications are all critical to the project. [The beneficiary] utilizes these tools, methodologies and applications in his current daily job duties and he will continue to utilizes [sic] these tools in the proposed position. This project consists of 4 team members. Because this project is outsourced strictly to [the foreign company] and that there are only 4 employees who have knowledge of the BaaN IV ERP application customization for [the U.S. client], [the beneficiary's] knowledge is unique and indeed specialized.

The petitioner also asserted that the beneficiary gained his knowledge through his work with the foreign company, specifically working on the same project with the U.S. client that he will continue in the United States, and the "specific training he has received on this application from the client." The petitioner explains

that the beneficiary will continue to work in the United States on the same project with the U.S. client. The petitioner described the duties the beneficiary has been performing with the foreign company as follows:

[The beneficiary] has used his specialized knowledge of the BaaN ERP application in the development of several key projects during his involvement with this project. He has developed application information documentation – this required analysis of the process flow of order to delivery, shop flow and material systems for [the U.S. client]. This analysis also required his knowledge of the BaaN ERP system to be able to develop the flow diagrams and map the customization and process of the standard BaaN ERP system. [The beneficiary] also determined support issues to create the transition plan for this project. Following this analysis and planning, [the beneficiary] was responsible for the migration of one of [the U.S. client's] plants to the BaaN ERP system. This involved the creation of UNIX scripts, BaaN job environment variables and user directories. He also resolved various migration issues, user requests and reports – which involved creating a process flow for the plant and mapping with it when the various jobs should be running. Because of his involvement on this project, the plant went live on time as planning.

The petitioner also asserted that the beneficiary started his practical experience in the information technology industry, and specifically as a BaaN consultant, in March 1998 and thus has obtained his specialized knowledge with information technology systems through his seven years of work experience, and his nearly one year and a half years of work experience with the foreign company; and four months of classroom training in BaaN Tools and Distribution and UNIX and Shell Scripting. The petitioner stated that the beneficiary's development of enhancements to BaaN IV ERP specifically for the petitioner's client "clearly shows his advanced and unique knowledge of the application and the proprietary customization of this product." The petitioner emphasized that only four employees are assigned to the client project, and that the beneficiary's duties are not performed by any other members of the project team.

The petitioner submitted the beneficiary's resume that lists the beneficiary's technical skills including the tools, languages and methodologies the beneficiary has utilized in his work experience. The beneficiary's resume also lists all the projects in which the beneficiary has participated in while employed by the petitioner, and a brief description of the duties performed for each project. The petitioner submitted the beneficiary's educational documents including his school transcripts and his certificate from Venkateswara University where he was awarded a Bachelor of Technology (Mechanical Engineering) degree, and several letters of reference from the beneficiary's former employers.

On September 29, 2005, the director issued a notice requesting additional evidence in order to establish that the beneficiary has specialized knowledge, and the position in the United States requires specialized knowledge. Specifically, the director requested: (1) a detailed description of the beneficiary's current duties for the employer abroad, including the percentage of time spent on each duty; (2) evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by petitioners who are similarly educated and/or engaged within the industry; (3) corroborating evidence that sets the beneficiary apart from his team members or any other employee similarly engaged in the industry; (4) evidence to establish that the beneficiary possesses an advanced or unique knowledge of processes, procedures, research, equipment, technique, management, and/or other interests of

the company that is distinguished from basic knowledge possessed by others who are similarly employed within the same occupation within the company or in the industry; (5) evidence of the beneficiary's technical training such as copies of diplomas, certificates of completion, or information of courses and the period of study; and, (6) if the beneficiary acquired his specialized knowledge only through practical employment experience, a detailed description of how the beneficiary's training and/or work experience differs from training and experience an individual would receive whom is similarly engaged within the industry.

In response, the petitioner submitted a letter dated November 11, 2005, responding to the director's request. In response to the director's request for a detailed description of the beneficiary's current duties for the foreign company, the petitioner provided a detailed description, including the percentage of time spent on each duty. The detailed description is in the record for reference and will not be repeated in its entirety here. It appears that the beneficiary spends 45 percent of his time on "support production issues related to constant and consistent support"; 10 percent of his time on "analysis of the existing BaaN application functionality with other legacy applications"; 10 percent of his time "gathering requirements from the end users and developing the system and technical specifications"; 5 percent of his time to "execute unit tests and participate in and support system testing"; 5 percent of his time to "develop estimations and scheduling of project activities in conjunction with the Project Manager"; 10 percent of his time to "provide technical and functional guidance to team in development activities"; and 15 percent of his time on "creation of report for [the U.S. client's] management team."

The petitioner further explained the beneficiary's specialized knowledge as follows:

It is [the beneficiary's] particular combination of general IT skills and knowledge, specialized International Business Machines ("IBM") classroom training, and on-the-job, practical experience with IBM-proprietary processes and methodologies that make him uniquely different from other individuals in the IT industry and [the foreign company]. [The beneficiary's] specialized knowledge and expertise in [the petitioner's] business processes, technologies and systems, and his previous experience on the project distinguish him from other in the field and from the other member of his team. [The beneficiary's] comprehensive and in-depth specialized knowledge in these area makes him essential to the success of the U.S. Team.

[The beneficiary] possesses the specialized knowledge, training and experience required to perform the proposed job duties in the Untied States. As previously stated in our support letter, [the beneficiary] was employed be several companies since March 1998, he has been employed by [the petitioner] as an Application Programmer on the BaaN ERP project for [the U.S. client]. During his employment at [the foreign company], [the beneficiary] has developed and applied his highly specialized knowledge of [the foreign company's] procedures, methodologies, strategies, and technologies.

In the response letter dated November 11, 2005, the petitioner also specified how the beneficiary has gained his specialized knowledge. The petitioner asserted that beneficiary possesses over seven years of professional experience in the information technology industry, including practical experience with BaaN ERP technology. In addition, the petitioner stated that the beneficiary has been employed by the petitioner

since March 2004 and thus "possesses practical experience with the petitioner's business systems and practices in India and the United States." The petitioner also stated that the beneficiary "has extensive practical experience with [the petitioner's] application development and maintenance projects, and [the U.S. client's] BaaN ERP project in particular, making him intimately familiar with the design and development of applications for [the petitioner]." The petitioner reiterated several of the duties the beneficiary has performed for the foreign company, as described in the original petition. The petitioner further stated that through the beneficiary's practical work experience with the petitioner, and the U.S. client in particular, the beneficiary is familiar with the U.S. client's "specific mix and customizations of technologies, its corporation environment, and its interactions with [the petitioner]." Finally, the petitioner asserted that the beneficiary has "professional classroom training and nineteen months of practical, on-the-job experience with [the petitioner's] proprietary and internal-use-only business systems such as Quality Management System (QMS), [the petitioner's] set of quality management procedures, and Application Management Services (AMS), [the petitioner's] application management procedures and standards."

In the response to the request for evidence, the petitioner failed to provide documentary evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by petitioners who are similarly educated and/or engaged within the industry; corroborating evidence that sets the beneficiary apart from his team members or any other employee similarly engaged in the industry; and evidence of the beneficiary's technical training such as copies of diplomas, certificates of completion, or information of courses and the period of study. 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 January 9, 2006, the director denied the petition concluding that the petitioner did not establish that the position of BaaN ERP technical consultant requires an employee with specialized knowledge, or that the beneficiary has such knowledge. The director noted that the petitioner did not demonstrate that the petitioner's processes and procedures are significantly different from the methods generally used by other computer companies, especially since the petitioner asserts that the beneficiary obtained his specialized knowledge, in part, through his practical experience with other information technology companies. The director determined that the petitioner failed to establish that the beneficiary's knowledge is noteworthy or uncommon, or the training received by the beneficiary is different or more advanced compared to training given to other similarly employed individuals with the petitioner or in the information technology industry. In addition, the director noted that the petitioner failed to submit any tangible evidence to corroborate its claims regarding the beneficiary's specialized knowledge.

On appeal, the petitioner asserts that the beneficiary is "clearly qualified for L-1B visa status." In addition, the petitioner summarizes the same points presented with the original petition and in the response to the director's request for evidence. The petitioner asserts that the beneficiary has acquired specialized knowledge in the following areas:

1. Knowledge of the application functionality and architecture, which is required to continue to perform the customizations in [the U.S. client's] BaaN ERP project in the United States and to resolve the internal issues faced in the project with the help of team

- in India. It will be extremely difficult for another individual to start on the project without knowing the customized features of the application.
2. Knowledge of how to customize the Baan ERP system technology, inside [the petitioning company].
 3. Knowledge of the specific application technologies and tools that are needed to further customize the project.
 4. Knowledge of [the petitioner's] internal business processes, techniques and standards that are required to execute the project. These processes are unique and internal to [the petitioner] and the knowledge of these processes are critical to work in the preferred position.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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 job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Based upon the vague job description of the proposed duties and lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner has repeatedly asserted that the beneficiary will be responsible for the customization of BaaN ERP system technology for the petitioner's United States client, however, the petitioner does not establish that the beneficiary must possess knowledge of business processes, procedures and methods of operation that are unique and proprietary to the company in order to implement, customize, and modify the software package. There is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that his level of knowledge is comparatively "advanced." The beneficiary's resume lists specific projects with the petitioner in which he has participated in order to modify, implement, maintain and update the software, but does not mention any experience in the development of internal policies or procedures. Simply going on record without 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.

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to BaaN ERP technical consultant positions within the U.S. company are different from those applied for other companies providing BaaN ERP customization and integration services. In addition, the petitioner has not explained how the knowledge of the petitioner's systems technology amounts to specialized knowledge, particularly since the system is built upon BaaN ERP and UNIX technologies, all of which are commonly used by computer programmers and system administrators in the industry. While individual companies will develop a computer system and methodologies tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. In the request for evidence, the director specifically requested that the petitioner submit documentary evidence which would establish that the beneficiary possessed specialized knowledge above that which is normally possessed by other BaaN ERP technical consultants employed by the foreign organization. In its response, the petitioner submitted a letter from the petitioner's immigration specialist stating that the beneficiary has completed professional classroom training, however, the petitioner neither indicated the length of time it took to complete these training courses nor presented evidence that the beneficiary actually completed the courses, as requested by the director. 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). Without specific information of the training courses completed by the beneficiary at the foreign company, the AAO cannot determine if this training provided the beneficiary with an advanced knowledge or if it is reasonable to believe that a BaaN ERP technical consultant with a background in related technologies may learn the petitioning company's specific project methodologies and processes with minimum training.

In addition, the petitioner did not submit any documentation to evidence that the beneficiary received additional training that was not provided to other BaaN ERP technical consultants employed by the foreign company. The petitioner did note that the beneficiary will be part of a team of four members for the project in the United States, and only four employees in the entire company have the beneficiary's specific knowledge in BaaN ERP systems as it relates to the specific U.S. client. However, the petitioner failed to present any evidence to corroborate this claim and it seems implausible that a company of 14,582 employees has only 4 employees with the beneficiary's level of knowledge of BaaN ERP technical systems. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Knowledge related to a specific clients' project cannot be considered "specialized knowledge" specific to the petitioning company. The beneficiary's familiarity with the U.S. clients' project requirements is undoubtedly valuable to the petitioner, but this knowledge alone is insufficient to establish employment in a specialized knowledge capacity. If the AAO were to follow the petitioner's logic, any technical consultant who had worked on a BaaN ERP customization client project team within the petitioner's organization would be considered to possess "specialized knowledge."

In addition, the petitioner did not submit documentation to evidence that the beneficiary has an advanced or special knowledge from other BaaN ERP consultants in the information technology industry. According to the beneficiary's resume, it appears that once the beneficiary commenced his employment with the foreign company, he immediately began working on the project for the U.S. client involving the BaaN ERP systems. This fact provides further evidences that the petitioner does not utilize a proprietary system that differs from the system used by BaaN ERP consultants in the information technology industry. Thus, the AAO cannot conclude that the beneficiary has an "advanced knowledge" of the petitioner's proprietary software over and above from other employees of the petitioner or other employees in the computer industry.

Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired specialized knowledge as defined in the statute and regulations.

The AAO does not dispute the likelihood that the beneficiary is a BaaN ERP technical consultant who understands the petitioner's technology and is able to apply it within the context of the petitioner's specific environment. However, it is 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*, 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." 18 I&N Dec. at 52. 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.

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*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. 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,

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

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 the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

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. 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. v. Attorney General*, 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.”)

The record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other BaaN ERP technical consultants. The petitioner has not established that the beneficiary has received extensive training or has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have “advanced” knowledge of the company’s business processes, procedures and methodologies, as well as “specialized knowledge” in the intricate software created by and utilized by the company. However, as the petitioner has failed to document any specific training, or otherwise describe or document the purported knowledge, these claims are not persuasive. 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)). Without this information, the AAO has no basis to compare the beneficiary’s knowledge to that of other workers within the company, and therefore it can not be concluded that her knowledge is “advanced.” There is no indication

that the beneficiary has any knowledge that exceeds that of any experienced BaaN ERP technical employee, or that he has received special training in the company's methodologies or processes which would separate him from any other similarly employer worker with the foreign company. Further, notwithstanding the lack of documentation, the petitioner failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

The petitioner noted that the beneficiary obtained his specialized knowledge by working with the foreign company for nearly one year and a half. If the AAO were to follow the petitioner's reasoning, then any employee who had worked as a BaaN ERP technical consultant with the foreign company for the same period of time possesses specialized knowledge. However, 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 status. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee. The petitioner asserts that it would be impossible to train U.S. workers to perform the duties to be undertaken by the beneficiary and other L-1B workers. This assertion is not substantiated by documentary evidence.

In sum, the beneficiary's duties and technical skills, while impressive, demonstrate knowledge that is common among computer systems professionals working in the beneficiary's specialty in the information technology field. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large information technology companies. 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 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.

The legislative history of the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra at 16*. Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.