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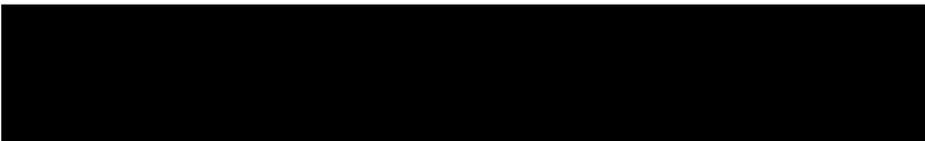
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FILE: WAC 06 052 50109 Office: CALIFORNIA SERVICE CENTER Date: **SEP 06 2007**

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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of manager of business development 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 company, claims to be a corporate communication and market research provider. The petitioner claims to be an affiliate of the beneficiary's foreign employer, IDC Israel Ltd., located in Israel. The petitioner seeks to employ the beneficiary for a period of one year.

On January 18, 2006, the director denied the petition, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

Counsel for the petitioner subsequently filed an appeal on February 7, 2006. On appeal, counsel contends that the director erred in denying the petition on the sole basis that the petitioner failed to establish that the beneficiary is employed in a specialized knowledge capacity in the United States. Counsel states, "there is no basis in law or regulation for the statement that the beneficiary must already be employed in a specialized capacity in the United States." Counsel further states that the foreign company employed the beneficiary in a specialized knowledge capacity and the petitioner is transferring him to the United States to perform in a specialized knowledge capacity. Finally, counsel asserts that the beneficiary is not currently employed in the United States in a specialized knowledge capacity. Counsel submits a brief and documentation in support of the appeal.

The AAO acknowledges counsel's statements that the law and regulations do not require that the beneficiary currently be employed in the United States in a specialized knowledge capacity. In the decision, the director noted that the fact that the beneficiary did not hold a specialized knowledge position in the United States provided further evidence that the beneficiary does not possess the claimed specialized knowledge. Thus, it appears that the director reviewed the beneficiary's job duties while he was employed both abroad and in the United States in order to determine if the beneficiary possessed specialized knowledge. To the extent that the director then denied the petition due to the petitioner's failure to evidence the beneficiary's current employment in the United States in a specialized knowledge capacity, the AAO agrees with counsel's argument on appeal and hereby withdraws the director's decision on this particular finding only. Nevertheless, since the director did not solely rely on this one determination in his decision to deny the petition, the AAO will further review the appeal under the director's finding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity 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 petitioner filed the instant nonimmigrant petition on December 6, 2005, indicating that the beneficiary would be employed in the United States as a manager of business development. In a support letter dated November 30, 2005, the petitioner stated that the beneficiary was "intimately involved with the development of [the foreign company's] research methodology techniques." In the letter, the petitioner described the specialized knowledge obtained by the beneficiary as follows:

[The beneficiary] independently established [the foreign company] in 1994. As Country Manager, [the beneficiary] is in charge of leading and driving the development of the

company. Having developed [the foreign company's] research methodology unique to the Israeli IT markets, he is responsible for defining and executing long-term business development strategies by offering [the foreign company's] clients specialized research of the Israeli IT markets. By initiating the one-of-a-kind market intelligence reports and selling them to [the foreign company's] clients worldwide, [the beneficiary] has applied his specialized knowledge in a way which had made [the foreign company] a leader in the field.

In the addendum to the Form I-129 Supplement L, the petitioner described the duties to be performed by the beneficiary in the United States as the following:

**Market Research:** Initiating, authoring and implementing IT market research studies for sale to [the foreign company's] clients around the globe. Continuing to develop and improve [the foreign company's] proprietary market research system for use at the company and its affiliates. ([The beneficiary] will perform the same function for [the petitioner's] US's [sic] clients, many of whom invest heavily in the Israeli IT market.)

**Business Development:** Supervising all business development activities, utilizing management expertise in business planning by reviewing market studies, financial forecasts, budgets and personnel for the company. Defining and executing long-term business development strategies to position [the foreign company's] services in the US and international markets. Overseeing performance of all business functions in Israel and conducting business negotiations with clients and business partners. Maintaining ongoing relationship between [the foreign company] and International Data Corporation.

**Corporate Strategies, Policies and Procedures:** Developing, modifying and supervising the implementation of corporate policies and procedures regarding business development and the specialized market research techniques for [the foreign company]. Monitoring market environment and competitors and defining the strategy, commercial policies and objectives for the company. Reviewing and approving Information Technology development and investment strategy for the company.

The director issued a request for additional evidence on December 12, 2005, stating that the record does not show that the beneficiary possesses specialized knowledge. In a letter dated January 2, 2006, counsel contends that the current standard for the interpretation of specialized knowledge is outlined in two legacy Immigration and Naturalization Service (INS) memoranda. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991) ("Puleo Memo"); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002) ("Ohata Memo"). Counsel states that the beneficiary has specialized knowledge in [the foreign company's] unique market research methodology." Counsel explains the petitioner's market research methodology as follows:

In the IT services arena, [the foreign company's] market research covers those services provided by external companies to various buyer segments for the planning, building, support and management of information systems and technology-enabled processes. The

task of sizing the Israeli IT services market, whether at a regional or local level, is a complex one. [The foreign company] uses two unique approaches to analyze the composition of services markets: by activity group or engagement type. Both approaches break down delivery of a give service to its component elements, which are called "activities" in the services taxonomy.

This proprietary system is not used or produced by other employers in the United States. Providing these services to US and international companies who seek to invest in Israeli high-tech start-ups and established high-tech firms is [the foreign company's] and [the petitioner's] niche.

Counsel explained that the beneficiary has over 20 years of experience in the "Israeli high-tech market."

The director denied the petition on January 18, 2006, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge. The director noted that the petitioner failed to provide a complete job description for the position the beneficiary held abroad, and the proposed position in the United States, that shows that the beneficiary possesses specialized knowledge. The director also noted that the duties to be performed by the beneficiary in the United States are not duties that require a person with specialized knowledge to fill the position.

On appeal, counsel contends that the director erred in denying the petition on the sole basis that the petitioner failed to establish that the beneficiary is employed in a specialized knowledge capacity in the United States. Counsel states, "there is no basis in law or regulation for the statement that the beneficiary must already be employed in a specialized capacity in the United States." Counsel further states that the foreign company employed the beneficiary in a specialized knowledge capacity and the petitioner is transferring him to the United States to perform in a specialized knowledge capacity. Finally, counsel asserts that the beneficiary is not currently employed in the United States in a specialized knowledge capacity.<sup>1</sup>

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.

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<sup>1</sup> As discussed above, the AAO has withdrawn the director's decision to the extent that it denied the petition due to the petitioner's failure to evidence the beneficiary's current employment in the United Sates in a specialized knowledge capacity. Nevertheless, the AAO will review the petition under the director's other finding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

As a threshold issue, the AAO notes that the two memoranda cited by counsel, the Puleo Memo and the Ohata Memo, are not binding authority for the interpretation of specialized knowledge. Instead, the statute, regulation, and CIS precedent decisions comprise the controlling law and provide the legal definition of specialized knowledge. *See* section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D); *see also Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982). CIS and legacy Immigration and Naturalization Service have issued many memoranda with varying interpretations of specialized knowledge during the 37 year history of the L-1 visa classification. CIS memoranda merely articulate internal guidelines for INS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

Although the petitioner repeatedly asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated sufficient basis to support this claim. The petitioner asserts that the beneficiary possesses an advanced knowledge of the petitioner's "proprietary market research system," and the "Israeli hi-tech market which spans over 20 years." However, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other managers of business development employed by the petitioner or the communication and market research industry at large. 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. The petitioner focuses on the beneficiary's twenty years experience in the Israeli hi-tech market and with the foreign company and states that the beneficiary has gained an advanced knowledge of the company's clients, the client's needs and the processes and procedures followed by the company. However, the petitioner has not explained how these processes and procedures differ from other companies that provide similar market research services. Based upon the 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).

As noted by the director, the in-house training completed by the beneficiary appears to have consisted of twenty years of on-the-job practical experience. Although the beneficiary apparently has many years of experience with the foreign company, the petitioner has not submitted sufficient evidence to indicate that this experience rises to the level of specialized knowledge and instead may be experience that is similar to any employee who has worked in a similar role in the industry for many years.

In reviewing the business plan submitted by the petitioner, it appears that all of the business goals for the U.S. company involve contacting new clients and marketing the petitioner's services. It is unclear how the beneficiary will utilize the petitioner's market research methodology when the majority of his duties will be in business development in acquiring new clients for the company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO does not dispute the likelihood that the beneficiary is a manager of business development who understands the corporate communications and technology needs, and is able to apply his knowledge within the context of the foreign entity's specific project-oriented 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)).<sup>2</sup> 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 firm's 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. 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 the employee and the remainder of the petitioner's workforce.

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

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, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

The AAO does not dispute that the petitioner’s organization has its own internal market research processes and methodologies. However, there is no evidence in the record to establish that the beneficiary’s knowledge of these systems, processes, and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to any U.S. employees it may have or to professionals who have not previously worked with the organization, or that the U.S. position offered actually requires someone with the claimed “advanced knowledge.” The petitioner has not submitted sufficient documentary evidence in support of its assertions or counsel’s assertions that the beneficiary’s skills and knowledge of the foreign entity’s processes, procedures, and methodologies would differentiate him from any other similarly employed business development managers within the petitioner’s group or within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel’s reliance on the Puleo and Ohata memoranda in support of the petition is misplaced. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991)(“Puleo Memo”); Memorandum from Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (December 20, 2002)(“Ohata Memo”). As previously noted, the memoranda were intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Therefore, by itself, counsel’s assertion that the beneficiary’s qualifications are analogous to the examples outlined in the memoranda is insufficient to establish the beneficiary’s qualifications for classification as a specialized knowledge professional. While the factors discussed in the memoranda may be considered, the regulations specifically require that the beneficiary possess an “advanced level of knowledge” of the organization’s processes and procedures, or a “special knowledge” of the petitioner’s product, service, research, equipment, techniques or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As discussed above, the petitioner has not established that the beneficiary’s knowledge rises to the level of specialized knowledge contemplated by the regulations.

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. Inasmuch as the petitioner has failed to identify

specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

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*, 745 F. Supp 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.

Beyond the decision of the director, the record does not contain evidence demonstrating that sufficient physical premises to house the United States office have been secured. The petitioner indicated that the U.S. office is located in a residential home that the beneficiary leases. However, in reviewing the lease agreement submitted with the petition, the lease expired in 2005 and the petitioner did not submit documentation of an extension of the lease or a new lease. The petitioner failed to submit any documentation evidencing that the United States company had acquired and maintained offices in which the beneficiary or any additional employees may work while employed by the petitioner in the U.S., and that the space and location would be sufficient to meet the business operational needs of the organization. For this additional reason, the appeal must be dismissed and the petition denied.

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

The petition will be denied 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. Accordingly, the appeal will be dismissed.

**ORDER:**                   The appeal is dismissed.