

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7



File: LIN 05 800 52846 Office: NEBRASKA SERVICE CENTER Date: **AUG 01 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 software consulting and product development company, states that it is a subsidiary of SRA Systems, Limited, located in India. The petitioner seeks to employ the beneficiary as a business/technical executive for a three-year period.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge, or that the petitioner would employ him in a position requiring specialized knowledge. In denying the petition, the director noted that the technologies with which the beneficiary would work, specifically "ClassMate" and "Odyssey," were developed by other companies and are thus not critical to the petitioner's proprietary interests.

On appeal, the petitioner explains that the technologies referenced by the director are in fact proprietary to the petitioner, notwithstanding the fact that other products developed by unrelated companies have similar names. The petitioner asserts that the beneficiary has specialized knowledge of the petitioner's proprietary products and processes, and has the specialized experience of developing new products for the foreign entity. The petitioner submits a brief and additional evidence in support of the appeal.

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

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

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

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This director addressed two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

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

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

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

The nonimmigrant petition was filed on May 20, 2005. In a letter dated June 16, 2005, the petitioner stated that the beneficiary is employed in the position of Business/Technical Executive with the foreign entity with the following responsibilities:

- Responsibilities include a multitude of roles starting with Requirements and system study to design, develop, and implement customized software using [the foreign entity's] products for clients both local and international.
- Acts as a liaison between various clients and [the foreign entity] to provide technical solutions and consultancy on projects during the initial stages of its conception.
- Upon identification of resources, responsible to handhold the resources on the requirements and design to ensure that the scope is well understood by the development team.
- Implement developed solutions in the real time scenario.
- Interface directly with the end Users and the Support team in India tracking the project to the end.

The petitioner stated that the beneficiary would serve in the position of Business/Technical Executive in the United States with similar duties, including responsibility for managing multiple projects. The petitioner indicated that the beneficiary would perform the following additional duties:

- Will play a more active role while being associated with the clients for the projects and services of [the foreign entity] in the US Market.
- Will be required to consult with clients to offer solutions and interact with the domestic teams, both during the requirements gathering phase and during the time of implementations of projects.
- Responsible for coordinating the activities of various projects that are currently in progress.

The petitioner explained that the beneficiary's "body of knowledge and managerial capabilities" make him invaluable to the company, and noted that he has completed a master of computer applications degree. The petitioner stated that the beneficiary "has over four years of progressively challenging experience in the specific industry segment . . . and through this experience he has gained the highly specialized knowledge of [the company's] processes and quality standards."

With respect to its proprietary products, the petitioner stated that the company has six "proprietary framework development and commercialization initiatives," including SRA-Document Management System (DMS); SRA-Workflow Management Systems (WMS); InforMate; ProcessMate; ClassMate; and PROOF. The petitioner provided a separate document providing additional information regarding each product.

The petitioner noted that its products are proprietary and that training in such products is only available in-house. The petitioner concluded that "no amount of generalized experience will result in developing expertise in our products."

In support of the petition, the petitioner provided copies of the beneficiary's bachelor's and master's degree certificates and transcripts, and a copy of his resume, in which he briefly outlined his roles in six different projects for the foreign entity, most of which involved DMS implementation for customers. Based on the resume, the beneficiary is also a member of the in-house product development team for the Odyssey Document Management System, with responsibility for "analysis, development, testing and implementation and production at customer sites." According to the beneficiary's resume, his technical skills include C++, C and VB 6.0 programming languages, MS Access, SQL Server 7.0; Visual C++, Visual Basic, and various operating systems and utilities.

On June 27, 2005, the director issued a request for additional evidence. The director advised the petitioner that the evidence submitted was insufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field, noting that "mere familiarity with an organization's products or services" does not constitute specialized knowledge as defined by the regulations. The director referenced a 1994 legacy Immigration and Naturalization Service memorandum from then Acting Executive Associate Commissioner [REDACTED] and stated that an alien would be considered to possess specialized knowledge if it was shown that "the knowledge is different and advanced from that generally held within the industry," and if the knowledge is shown to be critical to the petitioner's proprietary interests, and not merely knowledge that would enable them to produce a product or provide a service. [REDACTED] Acting Exec. Assoc. Comm., Office of Operations, Immigration and Naturalization Service, *Interpretation of Special*

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

Please explain with great detail what kind of specialized knowledge does the beneficiary possess. After reviewing all the evidence introduced it does not appear the beneficiary has any knowledge that would be significantly distinguishable from knowledge any other "Business Technical Executive" would possess.

How long did it take before the beneficiary acquired what you consider to be specialized knowledge as a Business Technical Executive? It appears that he was involved with very simple and basic programs, software and services that are commonly used in the industry. Please provide evidence that the tools with which the beneficiary was working are significantly distinguishable from any others used worldwide.

Please indicate how the beneficiary acquired his specialized knowledge. Support this claim with evidence and also include specific information, i.e., the length of any training programs, etc. . . .

Please provide a very detailed description of the beneficiary's actual daily job duties in the foreign entity.

Please provide a very detailed description of the beneficiary's proposed actual daily job duties in the United States in the event this petition is approved.

* * *

Please provide a very detailed and in depth explanation on how many of the petitioner's alleged "proprietary" process, products or framework developments significantly distinguishes them from any other service provider and how this alleged "specialized knowledge" which beneficiary possess significantly distinguishes him from any other analyst involved in providing these services.

In a response dated September 15, 2005, the petitioner provided additional details regarding its Odyssey, FlowMate, InforMate, ProcessMate, ClassMate and PROOF products. The petitioner stated that these products and frameworks "contain complex computer technologies, tools and processes that are unique to [the petitioning organization], which distinguish them from any service provider." The petitioner explained that it offers customers "the ability to combine the features of its products with highly customized layer to solve specific business problems."

With respect to the beneficiary's company training, the petitioner indicated that the beneficiary completed the following internal training:

January 3, 2001 to January 8, 2001 – SRA Quality Processes, including specialized processes, general process awareness, process monitoring, implementing process, software configuration management, risk management and testing techniques. The petitioner stated that this course was followed by two months of on-the-job application of the processes and practices learned.

March 2, 2001 to April 10, 2001 – Training in Odyssey Document Management System. The petitioner stated that the beneficiary's 39 days of training included Windows Application programming concepts; object oriented programming packaging using InstallShield software, and imaging, relevant to the product.

April 16, 2001 to May 18, 2001 - Training in FlowMate Work Management System, including training in the product functionality, implementation of Workflows within the system, integration of Odyssey with Workflow systems, and defining business processes using workflow designer tool.

The petitioner provided the following expanded position description of the beneficiary's current position in India:

- Design, develop and maintenance of the core parts of the Odyssey and Flowmate Systems. This development requires the specialized knowledge of [the petitioner's] products and through knowledge of the strengths, weaknesses and intricacies of the product.
 - Customization and implementation of solutions based on [the petitioner's] products to customers in India . . .
 - Solution development implementation of [the petitioner's] products to customers in the United States. [The beneficiary] has been involved in Gap Analysis, Customization, Implementation and Training for customers
 - Interface to iFlex Solutions (a leading provider of banking solutions). . . .
 - Prepare collaterals and give demos to support the sales team.
 - Study customer requirements to determine feature gaps and guide the product and customization teams in customizing the product for specific situations.
 - Design and develop key customization modules
 - Monitor status of customization projects and discuss implementation time schedules with customers
 - Implement customized solutions of [company] products
 - Train customers on products
 - Provide post-implementation support.
 - Acts as a liaison between various clients and [the foreign entity] to provide technical solutions and consultancy.
 - Upon identification of resources responsible to handhold the resources on the requirements and design to ensure that the scope is well understood by the development team
- Implement developed solutions in the real time scenario.

- Interface directly with the end Users and the Support team in India tracking the product development and customization to the end.

The petitioner further stated that the beneficiary allocates his time as follows:

- 20% Design, develop and maintenance of the core parts of the Odyssey and FlowMate Systems
- 30% Customization and Implementation of Solutions based on the products to customers globally
- 10% Study customer requirements to determine feature gaps and guide the product and customization teams in customizing the product for specific situations.
- 10% Design and develop key customization modules
- 5% Train Customers on SRA's products
- 15% Provide post-implementation support.
- 10% **Other job responsibilities mentioned above**

The petitioner stated that it requires a specialized knowledge professional to implement and provide training on its products in the United States. The petitioner indicated that the beneficiary's duties in the United States would be very similar to those he performs abroad, "with additional emphasis on certain aspects of his current responsibilities." The petitioner provided the same list of responsibilities, and added the following:

- Will play a more active role while being associated with the clients for the products and services of [the petitioner] in the U.S. Market.
- Will be required to consult with clients to offer solutions and interact with the domestic teams, both during the requirements gathering phase and during the time of implementation of projects.
- Responsible for coordinating the activities of various project that are currently in progress.

The petitioner indicated that the beneficiary would allocate his duties as follows:

- 10% Design, develop and maintenance of the core parts of the Odyssey and FlowMate Systems.
- 25% Customization and Implementation of Solutions based on the products to customers in the United States.
- 20% Study customer requirements to determine feature gaps and guide the product and customization teams in customizing the product for specific situations.
- 5% Design and develop key customization modules
- 20% Train customers on [the petitioner's] products.
- 10% Provide post-implementation support.
- 10% **Other job responsibilities mentioned above.**

The petitioner also submitted a letter dated August 10, 2005 for the foreign entity, which outlined the five training courses the beneficiary completed with the foreign entity, totaling 80 days of training, and briefly outlined the content of the Odyssey and FlowMate courses the beneficiary attended.

The director denied the petition on December 6, 2005, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity. The director acknowledged the training the beneficiary received at the foreign entity, but noted that the petitioner failed to establish that the content of the courses rose to the level of specialized knowledge. In reviewing the beneficiary's current job duties with the foreign entity, the director determined that the petitioner had not supported its claim that the beneficiary has specialized knowledge regarding the company's proprietary products and processes, or that his knowledge is "critical in any way to the petitioner's alleged proprietary interest." Rather, the director found that the beneficiary possesses knowledge which is easily transferable and not significantly distinguishable or advanced compared to any other "Business Technical Executive" within the petitioning company or within the field.

Further, the director noted that the products "Odyssey" and "ClassMate" were developed by companies that are unrelated to the petitioner, and that the petitioner simply adapts such products to meet its client's business needs. The director determined that the petitioner did not furnish evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field, and emphasized that mere familiarity with an organization's product or services does not constitute specialized knowledge under section 214(c)(2)(B) of the Immigration and Nationality Act.

On appeal, the petitioner provides evidence that the Odyssey and ClassMate products are in fact products developed by the petitioning company. The petitioner notes that Odyssey Software, Inc. is a provider of products that are completely unrelated to the petitioning company's Odyssey Document Management System. The petitioner provides a detailed overview of its Odyssey product, a User Manual for Odyssey, and a list of its customers who currently use the product. The petitioner provides a similar explanation and documentary evidence regarding its ClassMate product, noting that another, unrelated company has developed a product with the same name.

The petitioner emphasizes that these products are uniquely developed by the petitioner and are not adapted from the programs, software and tools of other organizations. The petitioner states that the beneficiary has gained "in-depth training and experience" in these unique products, and possesses specialized and advanced knowledge.

In support of these claims, the petitioner submits a new letter from the foreign entity providing an overview of the beneficiary's classroom and on-the-job training. Specifically, the foreign entity indicates that between June 2001 and December 2002, the beneficiary received a total of 11 months of on-the-job training in the following areas:

Enhancements to Registration and Filing cabinet modules of Odyssey. These tasks facilitate understanding of:

- The Common Service Modules that are part of Odyssey framework including Security and Server-Client interaction
- The Document Repository Architecture
- **Document Types and their Configuration**

Development of Odyssey Application Programming Interface (API)

Integration of FlowMate workflow component to Odyssey using the Odyssey API

The foreign entity states that since December 2003, the beneficiary "has played roles that can no longer be considered training," and notes that he has used his expertise in Odyssey and FlowMate to customize and implement solutions for several customers. Finally, the foreign entity indicates that the beneficiary was the leader of the team that developed ClassMate and therefore he is "intimately familiar" with the features and architecture of the application.

As a preliminary matter, the AAO acknowledges that the director erroneously determined that the Odyssey and ClassMate products referenced by the petitioner were actually developed by other, unrelated companies. The director's comments and analysis will be withdrawn in part, as it relates to the proprietary nature of the products implemented by the petitioning organization. As the AAO's review is conducted on a *de novo* basis the AAO will herein address the petitioner's evidence and eligibility, including supplementary evidence submitted on appeal. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On review, the petitioner has not established that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D), or that the intended position requires an employee with specialized knowledge. Instead, the petitioner consistently describes the position as one requiring a skilled software/systems application specialist, rather than someone who possesses specialized knowledge.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish that it involves specialized knowledge. *Id.*

It is also appropriate for the AAO to then look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in

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]

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 firm’s operation.

Id. at 53. The evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of “specialized knowledge” in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of “proprietary” knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed “L” category. In response to the Chairman’s questions, various witnesses responded that they understood the legislation would allow “high-level people,” “experts,” individuals with “unique” skills, and that it would not include “lower categories” of workers or “skilled craft workers.” *Matter of Penner, supra* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, “[m]ost employees today are specialists and have been trained and given specialized knowledge.” 18 I&N Dec. at 119. The Commissioner went on to state that not all workers who perform highly technical duties are eligible for classification as specialized knowledge employees. 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*,

interpretations by INS,” H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, including *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

1756, Inc., 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

Thus, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized training and performs technical duties does not necessarily establish eligibility for the L-1B intracompany transferee classification. As discussed below, the beneficiary’s job description does not distinguish his knowledge as more advanced or distinct among business/technical executives employed by the foreign or U.S. entities.

The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term “specialized knowledge” is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, “[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F.Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for “key personnel.” *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term “key personnel” denotes a position within the petitioning company that is “of crucial importance.” *Webster’s II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered “important” to a petitioner’s enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of “crucial importance” 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.

In the instant matter, the petitioner submitted a lengthy list of job duties associated with the beneficiary’s position. 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 “business technical executives” employed within the petitioner or the foreign entity. The petitioner has provided no detailed description of the beneficiary’s specific assignments or proposed assignments within the foreign or U.S. entities that would distinguish his duties, knowledge or skill set from any other similarly employed workers within the petitioner’s group of companies. Although the petitioner attempted to distinguish the beneficiary’s knowledge as “advanced” by referencing his responsibility for product development tasks related to the Odyssey product, the record is devoid of any detailed explanation regarding the nature or scope of his contributions to the development of this product. The beneficiary stated in his resume that his responsibilities as a member of the “in house product development” team include “analysis, development, testing and implementation and production support at customer sites,” using such technologies as MS Visual C++ 6.0 and Visual Basic 6.0, which are common in the field. The question of the beneficiary’s actual role in the development of the petitioner’s products and the applicability of such experience in the United States was left mainly unanswered by the petitioner’s conclusory assertions regarding his claimed specialized knowledge. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of*

California, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, it is noted that the petitioner states for the first time on appeal that the beneficiary led the team that developed the ClassMate system; however, there was no mention of the beneficiary's involvement with this product in any capacity in any of the previous letters submitted, or in the beneficiary's own resume, nor did the petitioner indicate that the beneficiary would work with the ClassMate product in the United States.

Overall, the record establishes that the beneficiary possesses some level of knowledge of the petitioner's proprietary products that is not commonly found in the industry. The petitioner has not, however, established how that training or experience sets him apart from other employees within the company, such that his knowledge of company products and processes could be deemed "special" or "advanced" compared to the knowledge possessed by other employees. It is reasonable to assume that any employee assigned to work on Odyssey and FlowMate projects would have received the same training as the beneficiary. While the beneficiary may possess knowledge not possessed by other "business technical executives" working with similar products outside of the petitioner's group, work experience and knowledge of a firm's technically complex products by themselves will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. at 53.

Although knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products and processes. The lack of evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's products or procedures as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. While it may be correct to say that the beneficiary is a highly skilled employee, the petitioner has not established that the beneficiary rises to the level of a specialized knowledge or "key" employee, as contemplated by the statute. *Id.*

Although specifically requested by the director, the petitioner has submitted no evidence that would distinguish the beneficiary from any other business technical executive employed within its international organization. The petitioner is required to establish that the beneficiary is a key employee rather than merely a skilled worker with knowledge of the petitioner's products and processes. Based on the petitioner's arguments, anyone who has worked as a business technical executive with the foreign entity for the same length of time as the beneficiary, would possess "special knowledge" or an "advanced level of knowledge." The petitioner's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker.

The petitioner also asserts that the beneficiary is knowledgeable of processes, standards and products that are proprietary and unique to the petitioner and its foreign parent company, including the Odyssey product, and that such proprietary knowledge is sufficient to establish that he possesses specialized knowledge. The petitioner suggests that specialized knowledge of these products is necessary 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, the majority of the beneficiary's duties relate to requirements gathering, customization of systems for specific customers, systems implementation and support in a technical environment that is typical for data base specialists in the information technology

industry, i.e., C++, C, Visual Basic, Visual C++, MS Access, SQL Server, and Windows operating systems. This knowledge and technical skills can readily be gained in the industry, and an experienced database management specialist at any information technology consulting company would be expected to possess similar expertise. The petitioner has neither shown that familiarity with these products alone constitutes specialized knowledge, nor has it demonstrated that the beneficiary possesses advanced knowledge of these products. Based on the description of the beneficiary's training, it does not appear that it takes a significant amount of time to train employees on the company's products, and the products themselves have not been distinguished from similar document management solutions developed by other companies in the industry.

The petitioner further indicated that the beneficiary received an additional 11 months of on-the-job training prior to assuming "roles that could no longer be considered training." The petitioner offered very little description of these "hands-on" tasks, no indication of how they contributed to the beneficiary's claimed "advanced" knowledge, and no explanation as to whether other employees received similar "hands-on" training in Odyssey and related products. The beneficiary's "on-the-job" training was not listed on his resume or in the initial training certificate provided by the foreign entity, and the petitioner provided no explanation for its omission. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not adequately substantiated its claim that the beneficiary's possesses "advanced" knowledge of the company's processes, procedures and tools.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.