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File: SRC 04 245 53236 Office: TEXAS SERVICE CENTER Date: JUL 29 2008

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

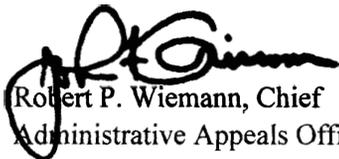
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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

- (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.

The director addressed two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the beneficiary has been employed by the foreign entity in a position involving specialized knowledge for at least one year in the three years preceding the filing of the petition.

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 September 16, 2004. In a letter dated September 14, 2004, the petitioner indicated that its corporate group has developed "Curam" which is described as "a complete proprietary suite of products, consisting of an enterprise framework for unemployment, welfare, social security, child welfare, child support, health insurance and workers compensation agencies across the globe." The petitioner described the beneficiary's proposed duties as a Senior Technical Consultant as follows:

In this capacity, [the beneficiary] will serve as a senior technical architect and technical advisor with regard to the architecture, design, development, and implementation of Curam, our proprietary product suite. The specific duties of the Curam Technical Consultant will include the following:

- To assist in the analysis of client requirements, both functional and non-functional, and investigate how to implement such requirements using Curam framework.
- To serve as a technical advisor in the definition of components of enterprise architecture based upon the Curam framework, and to assist in the definition of a development and implementation approach to be used to realize this architecture. The duties in this regard will include assistance with the following: (i) development of system architecture and component diagrams; (ii) the development of hardware and software configurations; and the development of high-level architectures for correspondence and printing, workflow,

integration and migration, auditing and archiving, error handling and validation; and other Curam-related architectural topics.

- To serve as technical reference for Curam-related design, development, testing and deployment knowledge.
- To develop or assist in the development of project-specific methodology, from requirements analysis to design, development, testing, deployment and support.
- To develop Curam design artifacts, including the Curam Rose Mega-model and design documents.
- To provide technical direction and advice in the development of Curam coding artifacts, including: Java Server code; UIM screen definitions; Message, Code table, and Data Manager files; Curam Server, Workstation, Database and network configurations; and Unit and System tests.
- To develop or assist in the development of documentation artifacts, including: user guides; coding documentation; design documentation; and training courses.
- To assist in the training and education of engineers in the technical issues associated with Curam development and implementation.

The petitioner stated that the requirements for the offered position included a minimum of a bachelor's degree in computer science or engineering, a software engineering professional background with "solid knowledge" of modern software architectures and design; and "a solid knowledge of the proprietary Curam framework and the technical issues and cycles associated with Curam development and implementation."

The petitioner indicated that the beneficiary would initially be assigned to the "ACCESS" project in Baton Rouge, Louisiana, for which the petitioner is partnered with IBM Corporation to develop a custom Curam application designed to modernize and enhance systems utilized by the State of Louisiana Department of Social Services. The petitioner stated that as the project enters the development cycle, requiring the formation of development teams and the commencement of software design and development, the company will require the services of a "senior technical resource with an in-depth knowledge of our proprietary Curam framework to support the next steps in the development and implementation of this custom Curam system." The petitioner emphasized that the Curam product suite "is proprietary to [the petitioner], and to our knowledge, [the petitioner] is the only company solely focused on the development of a framework for use by agencies furnishing unemployment, welfare and other benefits."

The petitioner further stated that the proprietary Curam framework was developed abroad and that the "in-depth level of skills and knowledge of our proprietary Curam framework necessary to fill this senior technical position in the United States is not available in the United States marketplace." The petitioner indicated that the only other employee filling a similar senior technical advisory role on the ACCESS project was transferred from the petitioner's Irish parent company and possesses significant experience with the petitioner's products. The petitioner noted that a second senior technical employee is needed to meet the project requirements during the development phase. Finally, the petitioner stated that "there is no other United States domestic employee, whether within or outside of [the petitioning company] with the in-depth knowledge of the Curam framework, necessary to fill this senior technical role."

The petitioner's letter also included a summary of the beneficiary's educational and professional background. The petitioner has provided evidence that the beneficiary has completed a bachelor's degree in electronics engineering and a master of technology degree in industrial electronics, as well as approximately eight years of software engineering experience. The petitioner indicated that the beneficiary has been employed by its Indian subsidiary since April 2002 as a technical architect, and described his duties as follows:

During his employment with [the foreign entity], the beneficiary has served as a lead architect on two major [company] projects in the United Kingdom: the Disability and Care Services project for the government of the United Kingdom; and the Customer Management System for the United Kingdom Department of Work and Pensions. The latter was an extensive U.K. project involving a staff of 150 employees from [the petitioning organization], IBM, EDS, PWC, Valtech and BEA. In addition to these projects in the United Kingdom, [the beneficiary] served as a Technical Consultant/Technical Lead for our Singapore Central Providence Fund project which involved the development of a prototype . . . using the proprietary Curam framework.

Through his work on these [company] projects abroad, [the beneficiary] has acquired an extensive knowledge of the Curam framework, and of the various development cycles necessary to effectuate the implementation of custom Curam projects. He is therefore well-qualified to furnish technical leadership and expertise as a Senior Technical Consultant on the ACCESS project and other custom Curam projects for our North American partners and customers.

In a cover letter dated September 14, 2004, counsel for the petitioner asserted that the beneficiary possesses "proprietary, unique and advanced knowledge of the employer's complex technology," and reiterated that the petitioner's technology is unique and is not produced by other companies in the United States or even worldwide.

In support of the petition, the petitioner provided copies of the beneficiary's university diplomas and a detailed resume, which lists his computer systems experience in various programming languages, web technologies, objects and methodologies, quality assurance, design tools, databases, operating systems and tools, as well as a summary of "corporate training" he has received. The resume also includes more detailed descriptions of the beneficiary's duties within the above-referenced projects mentioned in the petitioner's letter. As the beneficiary's resume is part of the record, the detailed project descriptions will not be repeated here. The beneficiary indicates that he is "skilled in Java Development Kit, Java Servlet Development Kit (JSDK), Forte for Java (SynerJ) and J2EE Application Environment, XML application development using Simple API for XML (SAX), and programming using C, C++, Java and Tool.

The petitioner also provided a copy of a questionnaire completed by the beneficiary in which he further discussed the staffing on each of his assigned projects with the foreign entity. His longest project assignment, which lasted from June 2002 through April 2004, was as a lead technical architect on a project with more than 150 employees, including a total of 20 lead technical architects, 20 business analysts, two account managers, five project managers, five database administrators, five deployment team members, ten lead developers, forty

developers, 60 testing/quality team members, and ten user training team members. The beneficiary indicated that he served as the "single point contact" for all the staff in the project for any technical issues with respect to Curam framework, developed solutions using Curam, and made changes to the Curam framework.

The petitioner also submitted additional background information on the project to which the beneficiary will be assigned, and explained that it does not currently have any U.S. technical consultants who are prepared to undertake the role of senior technical consultant within the timeframe required by the ACCESS project. The petitioner further explained the following with respect to the IBM employees assigned to the project:

IBM employees simply do not have the in-depth, specialist technical knowledge and experience of the Curam functional and technical frameworks to assure the customer of best practice, quality assured deliverables using Curam. Most IBM employees should possess basic Curam Technical Certification (called Curam Certified Developer), which provides a basic level of competence in the Curam Development environment, but does not make them Curam experts by any means. The engagement model and partnership arrangement with IBM allows Curam Software to provide differentiated, high-value Curam technical expertise to the IBM project team, based on the reality that Curam staff know the most about the Curam product.

The petitioner further explained the complexities of the Curam framework as follows:

While new staff (and indeed partner staff) can be reasonably expected to have some of the essential skills required in the areas of System Software & Technologies (including Java/J2EE/XML) for the relevant TADG role, the key Curam technical capability challenges fall into two distinct categories:

- Capability within the Curam Functional Framework, that is, the ability to understand, navigate and make informed decisions on the set of Curam functional components (and their interactions) which support modern Social Services service delivery in the context of the Curam implementation for that customer; in summary 'the horizontal business functions;'
- Capability within the Curam Technical Framework, that is, deep proficiency and competence in those technical components of Curam which support the Functional Framework as well as the Curam development and deployment environment, in summary, 'the vertical technical services.'

It is critical that a Senior Technical Consultant have the background in Curam development and implementation to provide the customer best practice, cost-effective, quality assured implementation of Curam.

The director issued a request for additional evidence on September 27, 2004, advising the petitioner that the evidence of record was insufficient to establish that the knowledge possessed by the beneficiary is

specialized. The director observed that the evidence did not establish that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The director also noted that the beneficiary has been and will be performing duties similar to those he has performed with other companies outside the petitioner's group. Accordingly, the director instructed the petitioner that it must provide evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director further instructed that the evidence must also establish that the beneficiary's knowledge of the processes and procedures of your company is apart from the elementary or basic knowledge possessed by others within the company. Specifically, the director requested the following:

Submit evidence relating to the unique methodologies, tools, programs, and/or applications that your company uses. . . . Please describe in detail how these are different from the methodologies, tools, programs and/or applications used by other companies.

- Explain, in more detail, exactly what is the equipment, system, product, technique or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad. Please submit a record – as opposed to merely a letter – from your human resources department detailing the manner in which the beneficiary has gained his/her specialized knowledge. Documentation should indicate the pertinent training courses in which the beneficiary has been enrolled while working for your company, as well as the duration of the courses, the number of hours spent taking the courses each day, and certificates of completion of these courses. Indicate the minimum amount of time required to train an employee to fill the proffered position. Specify how many workers are similarly employed by your organization. Of these employees, please indicate how many received training comparable to the training administered to the beneficiary.
- If the specialized knowledge was attained through the course of regular on-the-job experience, please clarify exactly what knowledge was attained through the beneficiary's past employment with the company. For each facet of specialized knowledge, please explain how the particular knowledge attained at that particular time was different from knowledge attained by individuals in the identical or similar position for the company.

The petitioner responded to the director's request on October 19, 2004. Counsel referenced a 1994 legacy Immigration and Naturalization Service Memorandum from the Acting Executive Associate Commissioner, noting that it is CIS' long-standing position that the beneficiary's knowledge need not be proprietary or unique, only advanced, and that the statute does not require that the advanced knowledge be narrowly held. Memorandum from [REDACTED] Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Special Knowledge*, CO 214L-P (March 9, 1994). (Puleo memorandum). Counsel emphasized that in the instant case, "the beneficiary does possess proprietary, unique and advanced knowledge of the employer's technology, and of how to implement such technology into large-

scale custom projects for government users." Counsel stated that the petitioner's technology "is proprietary and unique, and is not produced by other companies in the United States or even worldwide."

In a letter dated October 15, 2004, the petitioner provided the following additional information regarding its products:

The Curam framework is technologically complex, developed after many years of research and development by both human services and engineering professionals abroad. Curam is underpinned by a modern, multi-tier open, scalable and standards-based technical architecture to enable government and other agencies to implement flexible, robust, secure and scalable solutions. Curam's flexibility addresses the application architecture, business architecture, technical architecture and the development and runtime environments. Curam supports a range of RDBMSs, Operating Systems and Middleware products. Because Curam uses an EJB/J2EE architecture, it supports horizontal and vertical scalability, allowing customers to deploy on a wide range of deployment configurations. From a software architecture standpoint, Curam follows established design principles, using open standards, to separate Presentation, Business Logic and Persistence layers. From a development perspective, Curam application source code is provided to ensure maximum flexibility and extensibility. The development environment is based on open standards, including XML and Java. From an interoperability perspective, Curam-based solutions can be providers and consumers of Web services. This means that other applications can communicate with Curam through an open, standards-based mechanism.

The petitioner reiterated that there are no United States domestic employees in the company who can perform the duties of a Senior Technical Consultant for the ACCESS project. The petitioner noted that it has two Senior Business Consultants assigned to the project, but that such employees lack advanced technical knowledge of the Curam technology and of large-scale Curam implementations projects. The petitioner further described the beneficiary's claimed specialized knowledge training and experience as follows:

First, he has an in-depth knowledge of the Curam technical architecture. As an employee of Curam abroad, he has undertaken 400 hours of intense training in the Curam framework and has received certification as a Curam Certified Developer, which requires 160 hours of study.

In addition, [the beneficiary] has approximately two and one-half years of experience as an employee of [the foreign entity] abroad, and in this capacity has acquired in-depth and intensive experience on major custom Curam projects. He has served as a lead architect on two major Curam projects in the United Kingdom: the Disability and Care Services project for the government of the United Kingdom; and the Customer Management System for the United Kingdom Department of Work and Pensions. The latter was an extensive U.K. project involving a staff of 150 employees from [the petitioner], IBM, EDS, PWC, Valtech and BEA. In addition to these projects in the United Kingdom, [the beneficiary] served as a Technical Consultant/Technical Lead for our Singapore Central Providence project, which involved the

development of a prototype for the Central Providence Fund using the proprietary Curam framework.

Through his work on these Curam projects abroad, [the beneficiary] has acquired an extensive knowledge of the Curam framework, and of the various development cycles necessary to effectuate the implementation of large custom Curam projects. He is therefore well-qualified to furnish technical leadership and expertise as a Senior Technical Consultant on the ACCESS project and other custom Curam projects for our North American partners and customers.

The combination of advanced knowledge of the proprietary Curam product, and the skills necessary to apply such knowledge to a large custom Curam projects, are not available within the United States domestic workforce, either within or outside of [the petitioning company].

Finally, the petitioner stated that it would take "approximately two years to train another worker so that he/she possesses the level of proficiency necessary to fill this senior technical advisory role."

The petitioner also submitted a letter dated October 13, 2004 from Paul Horan, Worldwide Human Resources Manager of Curam Software Ltd., which was similar in content to the petitioner's letter. Mr. Horan reiterated that "it would take approximately two years of Curam training and 'on-the-job' major Curam project experience to acquire the necessary knowledge and skills to fill this senior technical and advisory position."

In support of its response, the petitioner submitted a copy of a certificate issued to the beneficiary confirming that he is a "Curam Certified Developer." According to information attached to the certificate, a "Curam Certified Developer" is considered to have basic technical proficiency, and such certification can be achieved by attended appropriate training courses and self-study of Curam documentation.

The director denied the petition on November 3, 2004, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge, that he was employed by the foreign entity in a position involving specialized knowledge, or that he would be employed in a capacity requiring specialized knowledge. The director acknowledged the petitioner's claim that the beneficiary received a total of 14 weeks (560 hours) of training, and the claim that it requires two years for an individual to achieve the beneficiary's level of proficiency with the petitioner's products. However, the director determined that the petitioner had failed to submit evidence to support these claims, particularly with respect to the beneficiary's training. The director observed that the only training certificate submitted appeared to represent that the beneficiary has achieved a "basic" level of understanding of Curam develop products. The director noted that the petitioner had provided no itemization of training received, and failed to provide the dates of training.

On appeal, counsel for the petitioner asserts that the director's decision that the beneficiary does not possess the necessary specialized knowledge is "clearly erroneous in that such decision is contraverted by the evidence and by the USCIS' own regulations and policy memoranda defining 'specialized knowledge.'" Counsel emphasizes that the offered position of senior technical consultant is "expected to act as a technical reference and technical expert for Curam-related design, development, testing and deployment, with

responsibility for serving as a "senior technical architect and technical advisor with regard to the architecture, design, development and implementation of the proprietary Curam product suite."

Counsel asserts that the "definition of 'specialized knowledge,' and the government's interpretation of the term, have undergone significant change over the past fifteen years, first with the passage of the Immigration and Nationality Act of 1990 and the implementing regulations, which "were considered to be a liberalization of the prior definition and interpretations. Counsel further asserts that the understanding of the meaning of specialized knowledge was enhanced by the release of the Puleo memorandum. Counsel emphasizes that according to the Puleo memorandum, the petitioner need only establish that the knowledge possessed by the beneficiary is "different from that found in the particular industry." Counsel lists several examples from the memorandum of situations in which counsel states a beneficiary is "expressly deemed to possess specialized knowledge." Counsel emphasizes that according to the Puleo memorandum, the knowledge possessed by the beneficiary must be difficult to impart to another individual without significant economic inconvenience to the firm, is not generally known, and is of some complexity.

Counsel further asserts that the petitioner submitted ample probative evidence to establish that its proprietary technology is unique to the petitioner, that it is not produced by any other organization, and that it is technologically complex. Counsel emphasizes that the petitioner also submitted evidence to establish that the beneficiary has an advanced academic background in computer engineering principles, and that he had approximately seven years of software engineering experience at the time he joined the foreign entity.

With respect to the beneficiary's experience gained with the foreign entity, counsel emphasizes that the beneficiary has been involved in the analysis and mapping of government and business technical requirements, and the development of a scaleable, reliable and management architecture and design for the **custom application using the petitioner's proprietary framework**. Counsel contends that based on the beneficiary's "extensive experience as a lead technical architect and technical advisor with regard to major projects involving the customization of the proprietary Curam framework. . . it is apparent that he has much more than just a basic knowledge of Curam nomenclature and procedures." Counsel states that it is the beneficiary's advanced knowledge of the petitioner's unique technology and processes, rather than his knowledge of general software tools or products, that make him qualified for the offered position. Counsel asserts that the facts of this case "fits squarely within the illustrations of 'specialized knowledge' set forth in the Puleo Memorandum."

Counsel further contends that the director placed inappropriate and incorrect emphasis on "Curam Certification" as an indicator of whether the beneficiary possesses specialized knowledge. Counsel states that the petitioner never claimed that the beneficiary's Curam Certification furnishes him with the specialized knowledge required for the United States position. The petitioner submits a memorandum from [REDACTED] the petitioning organization's Global Manager of Technical Architecture and Development. Mr. [REDACTED] confirms that the Curam Certification was implemented in the first quarter of 2004 as a means of recognizing achievement of certain levels of competence by the petitioner's customers and system integrator partners. He states that only the Basic Technical Certification (Curam Certified Developer) has been implemented to date, thus the beneficiary has achieved the highest level of existing Curam Certification.

██████████ further states that "achieving competence as a Curam Technical Consultant means acquiring in-depth technical knowledge of all components within the Curam Technical Framework," and that a period of two years is required "to achieve the goals of the learning challenge for a Curam Technical Consultant." He indicates that the learning is achieved primarily through "incremental and sustained experiential usage on Curam implementation projects; training and study is by far in the minority of this time." He notes that all technical consultants working in the company, as of September 2004, had achieved the CCD certification. He further states that new staff members joining the company subsequent to October 2004 are required to participate in a formal induction period of ten weeks, during which they are encouraged to sit for CCD certification. He noted that a total of 29 staff employed by the petitioner's Systems Integrator Partner companies have also achieved the CCD certification. ██████████ also distinguishes between a Technical Consultant and a Senior Technical Consultant, noting that the latter has "general knowledge of IT architecture and therefore the ability to define and articulate how Curam fits into a customer's enterprise IT architecture."

With respect to the director's finding that the petitioner did not establish that the beneficiary possesses the required year of employment in a specialized knowledge capacity, counsel asserts that the director's decision "inappropriately increases the amount of tenure necessary for L-1 visa classification." Counsel disputes the director's interpretation that the regulations require that "the beneficiary must have achieved a specialized knowledge level for a year prior to filing a specialized knowledge petition," asserting that such interpretation has no basis in law and would essentially increase the minimum employment threshold of one year established by the Act. Counsel submits that the beneficiary possesses well over one year of specialized experience with the petitioner's proprietary product.

Counsel further contends that the beneficiary qualifies as an individual with specialized knowledge pursuant to the Puleo memorandum, "in that his inability to obtain L-1 status would significantly interfere with [the petitioner's] ability to transact business in the United States." Counsel emphasizes that the beneficiary's knowledge would be difficult to impart to another individual and notes that the petitioner has confirmed its inability to transfer the beneficiary to the United States will render the company unable to furnish senior technical consultancy services on the ACCESS and other U.S. projects.

On review, the petitioner has not demonstrated 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).

Preliminarily, regarding the petitioner's claim of specialized knowledge, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that CIS is bound to base its decision on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memorandum accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* Here, the AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioning organization. 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 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

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, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

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. 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. REP. 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 subcommittee 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*, 18 I&N 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 above-referenced Puleo memorandum also directs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Executive Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Puleo memorandum, *supra*. A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge

therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

The petitioner has submitted detailed position descriptions for the beneficiary's current and proposed positions which confirm that knowledge of the petitioner's Curam framework is required for both positions. However, the petitioner has not documented that the beneficiary possesses specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Although the petitioner repeatedly asserts that the beneficiary's position requires specialized knowledge and that the beneficiary had been employed abroad in a specialized knowledge capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced workers employed by the foreign entity or in the 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary has specialized knowledge of the proprietary Curam framework as well as an "advanced level of knowledge of [the petitioning organization's] processes and procedures." However, despite these assertions, the record does not establish how, exactly, the pertinent software products or the petitioner's "processes and procedures" as they relate to this software are so materially different from those of other software products that a generally experienced and similarly educated software worker could not perform the duties of the position. The petitioner never establishes the difference between the petitioner's products, processes, and procedures and other software products, and related processes and procedures, which requires noteworthy or uncommon knowledge not possessed generally by similarly educated software workers. For example, the petitioner presented a diagram of the "Curam Learning Challenge," which indicates that the product is built on technologies not proprietary to the petitioner, including Java, J2EE, XML, application servers, IBM WebSphere MQ, Websphere Studio Application Developer, DBMS, DB2, Oracle, EAI, WSDL/SOAP/UDDI. The petitioner indicates that there are certain areas of knowledge proprietary to the Curam product, including a "Curam Development Environment," but it does not further elaborate on how these aspects distinguish the applicant's product such that experience with the product alone would constitute specialized knowledge.

Further, the petitioner alleges that the beneficiary's knowledge was acquired through 400 hours of "intense training" and over two years of project experience with the foreign entity in the role of technical architect. However, the director specifically instructed the petitioner to submit a record detailing all pertinent training undertaken by the beneficiary, as well as information regarding the number or workers in the organization who are similarly employed and have received similar training. The director also requested that the petitioner clarify the specific knowledge obtained through on-the-job experience and how such knowledge differed from that of other employees holding the same position within the company. The petitioner failed to submit any documentation or explanation regarding the 400 hours of training the beneficiary allegedly received, nor did it elaborate regarding the beneficiary's on-the-job experience or attempt to differentiate such experience from

that possessed by other employees within the company. It is reasonable for the director to request information that will establish the nature of the beneficiary's training and assist him in identifying the claimed specialized knowledge, whether the beneficiary possesses the claimed knowledge, the petitioner's requirements for the position, and any other information that will enable him to evaluate the claimed specialized knowledge.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 8 C.F.R. § 214.2(l)(3)(viii). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by experienced software professionals with similar experience, or by other employees of the petitioning organization. The fact that no other employee possesses very specific knowledge of certain aspects of proprietary software does not alone establish that the beneficiary's knowledge is indeed uncommon or noteworthy. All employees can be said to possess unique and unparalleled skill sets to some degree; however, a skill set that can be imparted to another similarly educated and generally experienced software employee without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's product do not establish that any level of knowledge of this software is "specialized." Rather, the petitioner must establish that qualities of the product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other professionals may not have very specific, proprietary knowledge regarding the petitioner's product, or its implementation, is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced software employee.

Furthermore, while the petitioner implies that the beneficiary gained his purported specialized knowledge through the performance of his foreign job duties, the petitioner failed to support this claim with any evidence. Once again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). The record is devoid of evidence establishing, exactly, what knowledge was imparted during the performance of these duties and why the purported specialized knowledge took this long to impart. Furthermore, although the petitioner states that it requires approximately two years for an employee to gain the knowledge required for the offered position in the United States, the record shows that the beneficiary assumed the similar position of "Lead Architect" with the foreign entity just two months after joining the company, thus raising the question of exactly how much training and experience regarding the petitioner's proprietary products is actually required for a senior technical role within the company, and how much of the requisite knowledge is simply general knowledge and experience in IT architecture related to the petitioner's area of specialization in the information technology field. The petitioner offers no explanation for this fundamental inconsistency in the record. 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).

Based on the foregoing, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other experienced workers employed by the petitioning organization or by software workers employed generally in the petitioner's industry segment. As the petitioner has failed to document any materially distinct qualities to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced professional or that he has received special training in the company's methodologies or processes which would separate him from other professionals employed with the petitioning organization or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

As the petitioner relies heavily on the Puleo memorandum to support its arguments that the beneficiary possesses specialized knowledge, it is important to note that the memorandum emphasizes that the petitioner must substantiate its claims with supporting evidence:

[T]he mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. *The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.* It is the weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge.

(Emphasis added.) Puleo memorandum, *supra*.

In sum, the petitioner has failed to demonstrate that the beneficiary's training, work experience or knowledge of the petitioner's software framework is more advanced than the knowledge possessed by others employed by the petitioner, or by other companies who implement similar software. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job with the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel," nor does it establish employment in a specialized knowledge capacity.

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, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity involves specialized knowledge.

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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.