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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship and Immigration Services

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File: WAC 08 212 50808 Office: CALIFORNIA SERVICE CENTER Date: JUL 0 8 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary an L-1B 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 semiconductor manufacturer, is the parent company of the beneficiary's foreign employer located in the Philippines. The petitioner seeks to employ the beneficiary as a manufacturing technician at its Aloha, Oregon facility for a period of nine (9) months.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director observed that the record consisted primarily of the unsupported assertions of the petitioner, and that such assertions were insufficient to establish the beneficiary's eligibility.

On appeal, counsel for the petitioner asserts that the director disregarded the petitioner's probative evidence of the beneficiary's eligibility for L-1B classification. Counsel asserts that the petitioner clearly differentiated the beneficiary's knowledge from that of the petitioning organization's remaining U.S. and Philippines workforce. Counsel further asserts that the director requested evidence that "simply remains unavailable," and inappropriately denied the petition based on a lack of evidence. Counsel asserts that "the petitioner's statements/documentation regarding employment, the critical need for the beneficiary's services, and the beneficiary's training and education are the applicable and appropriate 'hard evidence' of specialized knowledge." Counsel submits a detailed brief in support of the appeal.

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

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of

the petition.

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

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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 Form I-129, Petition for a Nonimmigrant Worker, on July 28, 2008. In a letter dated July 24, 2008, the petitioner stated that the beneficiary will serve as a manufacturing technician, responsible for assisting with the installation and qualification of equipment at the petitioner's facility in Aloha, Oregon, and performing functions associated with tool setup and wafer production.

Specifically, the petitioner stated that the beneficiary's duties will include:

- Operating and setting up equipment to support the line operation and produce quality products;
- Monitoring machine and process performance;
- Qualifying equipment for production;
- Providing training on maintaining and operating the equipment;
- Sharing best-known methods of recovering equipment from errors and mechanical failures.

> This position requires an employee who possesses specialized and advanced integrated knowledge of [the petitioner's] 1266 process technology, [the petitioner's] standard operation procedures, [the petitioner's] equipment installation, qualification, maintenance and operation, and collecting and evaluating operating data to determine and implement adjustments and

> optimization. These processes and procedures are proprietary to [the petitioner] as they were developed by [company] engineers. This knowledge is specialized since it is all [company] specific. It can only be acquired through on-the-job training at [the petitioner or its subsidiaries] and cannot be acquired through education or work experience with another company.

The petitioner stated that the beneficiary has been employed by its subsidiary in the Philippines since January 1998, where she "is responsible for functions associated with wafer production, including, equipments operation, process and training, running qualitative lots, ensuring high standard product." The petitioner further described the beneficiary's qualifications as follows:

> The position requires familiarity of proprietary, advanced semiconductor equipment technology, including but not limited to [the petitioner's] proprietary manufacturing processes, as well as [the petitioner's] operational and production procedural guidelines. As a result of [the beneficiary's] specialized knowledge in these areas, she is at a more advanced level than other employees at the [foreign entity] who have the same job title. [The beneficiary] was selected for this temporary assignment because of her specialized knowledge of these [company] proprietary processes and systems.
>
> [The beneficiary] possesses an advanced level of specialized knowledge and expertise with respect to [the petitioner's] processes and technologies.

The petitioner referred to a 1994 legacy Immigration and Naturalization Service (INS) memorandum that addresses the interpretation of specialized knowledge and stated that the beneficiary meets the criteria set forth in the memorandum and the applicable regulations. [1] Specifically, the petitioner stated:

> [The beneficiary] possesses an advanced and specialized knowledge of [the petitioner's] 1266 process technology, [the petitioner's] standard operating procedures, [the petitioner's] equipment installation, qualification, maintenance and operation, and collecting and evaluating operating data to determine and implement adjustments and optimization. She has expertise in [the petitioner's] manufacturing processes and products which he [*sic*] acquired at [the foreign entity] through on-the-job training and site training classes. Specifically, she has spent the last ten years in on-the-job training using [the petitioner's] proprietary manufacturing processes.

In support of the petition, the petitioner submitted what appears to be the beneficiary's secondary school diploma awarded in 1989.

The director issued a request for additional evidence on August 7, 2008, advising the petitioner that the initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge. Specifically, the director instructed the petitioner to submit: (1) the total number of employees at the foreign location where the beneficiary is employed; (2) the number of foreign nationals employed at the U.S. location where the beneficiary will work, including their job titles and visa status; (3) the number of L-1B visa holders transferred to the U.S.

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[1] Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994)(hereinafter "Puleo memorandum").

location over the last five years; (4) the number of persons at the U.S. location holding the same or similar position as the beneficiary; (5) evidence regarding any special or advanced duties performed by the beneficiary, including an explanation as to how the beneficiary's duties abroad and in the United States are different from those performed by others; and (6) evidence that the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known by others employed by the petitioner in the same field.

In response to the RFE, the petitioner submitted a letter dated September 12, 2008. The petitioner explained its use of the L-1B classification, noting that its design, fabrication and manufacturing sites are located around the world. The petitioner noted that each product is assigned to a particular business group, which often includes both U.S. and foreign employees, resulting in a need for U.S. and foreign sites to partner resources from conception to the final production phases of an assigned product. The petitioner emphasized that in cases where a business group has both U.S. and foreign employees working on a product, "the employees are not duplicating work or development. Rather each site contributes to a portion of the production, with an eye toward merging activities to generate a single, quality product."

The petitioner stated that it utilizes the L-1B classification to temporarily bring the team lead of each business group to the U.S. for critical steps in the production cycle, and to "temporarily bring team leads and/or team members with specific advanced knowledge of [the petitioner's] proprietary processes and products to assist the U.S. team and/or site with new processes and/or tools" as required by production cycle deadlines. The petitioner stated that, in the instant matter, the beneficiary is needed to assist its Aloha, Oregon site "to prepare its tape and reel die sort ('TRDS') machinery/tools and to improve its tools stability and staff competency for an increased ramp in production."

The petitioner provided additional background information regarding "the equipment, process and product at the core of the petition," as follows:

> One of the processes contained within [the petitioner's] overall semiconductor manufacturing process is the Die Prep Assembly process. This process incorporates tools and equipment to separate dice from [company]-manufactured wafers and transfer the dice to a carrier tape reel. The dice are then sealed in the carrier tape as an individual assembly lot and processed through to the chip attached module operation. This is a critical step in the manufacturing process, allowing large-scale, efficient die assembly and subsequent semiconductor production.
>
> The above process requires TRDS machinery and tools to complete the separation and transfer of the die. So that this step of the processes does not jeopardize the budget or deadline of the entire manufacturing process, the tool stability rate, or "actual utilization" of the tools, must be at 85% or higher throughout the process. Maintaining this level of performance requires improving tool stability to comply with other [of the petitioner's] sites, identifying gaps in the tool actual utilization, expediting repair time, and utilizing on-site staff that can efficiently handle TRDS gaps, errors and maintenance. In this case, the above process and equipment will be used to increase the production of [the petitioner's] P1266 Penryn and Siverthorne microprocessor products, both of which are [company]-specific.

The petitioner further described the specific specialized knowledge as "the in-depth, on-the-job use of [the petitioner's] TRDS tools and equipment within the die prep assembly process in relation to [the petitioner's] P1266 Penryn and Silverthorne microprocessors." The petitioner indicated that the specific TRDS tools and equipment have been transferred from the company's Assembly and Test Manufacturing site in the Philippines to the Aloha, Oregon site. The petitioner emphasized that the knowledge can only be gained within its organization, and "cannot be easily transferred or taught to a [company] employee working within a different business group or with different equipment/tools, let alone an individual not employed by [the petitioner] in the U.S. or abroad."

The petitioner explained that it does not currently employ any U.S. employees or foreign nationals at the Oregon site who perform the same or similar duties. The petitioner noted that, although there are manufacturing technicians at the site, they do not currently work on or have knowledge of the specific equipment/tools that were recently transferred by the foreign entity. The petitioner further stated that the existing manufacturing technicians work for different business groups, and do not have the specific knowledge regarding the TRDS equipment/tools that were previously operated in the Philippines. The petitioner explained that "without the significant time the beneficiary had to work with these TRDS equipment/tools, the current Aloha Manufacturing Technicians cannot step into the beneficiary's role to properly install, operate and maintain the TRDS equipment/tools in a time frame that will allow [the company] to meet its production schedule and remain competitive."

In addition, the petitioner stated that the beneficiary will be briefly traveling to the United States to assist with the installation and qualification of the new equipment, and coaching the U.S. staff to establish and maintain the required actual utilization rate.

In response to the director's request for evidence of any special or advanced duties the beneficiary has performed, the petitioner stated:

> In preparation for the Aloha site's ramp in production, [the petitioner] issued a worldwide request for [company] employees possessing the specialized knowledge needed to complete the installation, qualification, and maintenance of the TRDS equipment/tools. Only 17 employees were able to respond with the required specialized knowledge of TRDS equipment/tool installation, qualification, and maintenance. The beneficiary is one of these 17 critical employees.
>
> The beneficiary's duties differ from other [company] employees having the same job title because her duties have focused solely on the [company] TDRS equipment/tools and their actual utilization as operated at the Philippines ATM site. [The petitioner] employs similar Manufacturing Technicians, but each technician works within a particular division, which is part of a larger business group and operates different tools. Please note that these "tools" are not traditional hammers and saws, but rather highly sophisticated, multimillion dollar equipment that has been customized and configured to meet [the petitioner's] specifications.
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> Furthermore, each division is assigned to a specific product, and all technician activities within that division fall within the realm of and are limited to the product. Therefore, a Manufacturing Technician from a different division would not have the specific knowledge of the Philippine TRDS equipment/tools that the beneficiary possesses. The beneficiary's training and experience

> . . . provide the skills needed to ensure the proper installation and maintenance of TRDS tools/machinery within the Die Prep Assembly process. This elevated level of knowledge separates and elevates the beneficiary above the other engineers within the Die Prep Assembly at the Aloha site.
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> [The petitioner] has continuously employed the beneficiary in a highly specialized position. She is a key manufacturing technician, and one of a handful of technicians traveling to the Aloha site from the Philippines to install, qualify, and train on the new equipment in preparation for the upcoming ramp in production. Other workers, whether employed by [the petitioner] or not, cannot step into the beneficiary's' role because of the specific [company] TRDS equipment/tools knowledge, experience and training needed to prepare the Aloha site's Die Prep Assembly process for increased production, which will secure [the petitioner's] competitiveness.

The petitioner stated that the specific equipment of which the beneficiary has specialized knowledge is the "Alphasem SWISSLINE 9021MT, which simultaneously sorts and transfers up to 5 different dice." The petitioner indicated that the beneficiary "will install, qualify and develop paths to maintain this equipment within the Aloha site's Die Prep Assembly process." The petitioner further stated:

> Although the equipment can be used by other U.S. and foreign employers, the equipment on which the beneficiary will work has been configured specifically for [the petitioner's] manufacturing needs and production cycle. Due to the specific configuration, the equipment installation and operation is native to [the petitioner] and operates as a strictly [company] machine. Therefore, U.S. or foreign workers who have used this equipment with other companies would not be able to install or operate this equipment without significant training. Lastly, the equipment will be used to produce [the petitioner's] P1266 Penryn and Silverthorne microprocessors, which are [company]-specific products. These products are not produced by any other U.S. or foreign employer.
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> . . . . the beneficiary has completed vital on-site, supplier and [company]-provided training programs that provide her with specific knowledge that can be applied to [the petitioner's] particular assembly die process and TRDS tools in relation to the production of P1266 microprocessors.
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> The beneficiary is only one of a handful of Manufacturing Technicians from the Philippines ATM site that possesses the above training and years of experience working solely with equipment/tools from the [petitioner's] Philippines site. Furthermore, and more importantly, of the 1,699 Manufacturing Technicians employed at [the foreign entity], the beneficiary will be one of only 17 Manufacturing Technicians traveling to the Aloha site with the training and narrowly tailored experience listed above. The beneficiary's concentrated, specific duties coupled with her training provide the beneficiary with the precise equipment/process knowledge that is required to assist [the petitioner's] Aloha site in preparing its assembly die process for the upcoming ramp in production.

The director denied the petition on September 25, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, or that she has been and would be employed in a capacity that requires specialized knowledge. In denying the petition, the director observed that the petitioner provided no evidence in support of its assertions regarding the beneficiary's advanced and specialized knowledge. The director emphasized that the record consists primarily of the petitioner's unsupported assertions. In addition, the director found that the petitioner had failed to distinguish the beneficiary's knowledge from that possessed by the 1,698 other technicians who hold the same position with the foreign entity. The director, while granting that the beneficiary's knowledge is company-specific, determined that the skills required to perform the duties had not been shown to require specialized knowledge of the petitioner's product, processes or procedures that "surpasses the ordinary or usual."

On appeal, counsel for the petitioner asserts that the director failed to consider the evidence submitted in response to the RFE, and instead relied on "boilerplate" language that did not include a meaningful analysis of the petitioner's evidence. Counsel asserts that the petitioner submitted significant probative evidence to establish that the beneficiary possesses specialized knowledge and satisfied all statutory and regulatory criteria for L-1B status. Counsel contends that the evidence submitted distinguishes the beneficiary from the petitioner's U.S. workforce and explains why she was included among the small group of employees traveling to the United States from the Philippines site based on her knowledge and experience with a crucial process within the petitioner's production cycle.

Counsel asserts that the director implemented an untenable standard by requiring that the petitioner distinguish the beneficiary from other workers in the semiconductor industry. Counsel emphasizes that the petitioner does not have access to and cannot provide information that pertains to the confidential and proprietary standards of its competitors. Counsel further asserts that the standard of comparing an L-1B beneficiary to employees outside the petitioner's operations is not mandated by statute or regulation. Counsel asserts:

> The L-1B classification is based on employment with a petitioner and a beneficiary's qualifications; thus, the petitioner's statements/documentation regarding employment, the critical need for the beneficiary's services, and the beneficiary's training and education are the applicable and appropriate "hard evidence" of specialized knowledge.
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> * * *
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> Ultimately, the comparative evidence regarding an "outside group" requested by [the director] cannot be provided, and therefore, creates a standard that is impossible to meet. . . . [The petitioner] properly established specialized knowledge by detailing the importance of the process at hand and confirming [the beneficiary's] specialized and narrowly-tailored experience within that process. This viable, "hard" evidence properly distinguishes [the beneficiary] from [the petitioner's] remaining Philippines and U.S. workforces. More importantly, the evidence [the petitioner] provided establishes [the beneficiary] as a key employee possessing specialized knowledge. . . .

In addition, counsel asserts that the director improperly relied on *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), and failed to state any reason why the petitioner's statements are not sufficient.

Counsel asserts that "the authority clearly does not allow [USCIS] to ignore evidence so that it can issue a denial based on the insufficiency of a petitioner's statement."

Counsel further disagrees with the director's determination that the petitioner did not distinguish the beneficiary from its remaining workforce, emphasizing that the petitioner explained in detail the "integral nature of the process on which [the beneficiary] would work and [the beneficiary's] expertise with the process." Counsel indicates that the beneficiary is part of a team of manufacturing technicians from the Philippines coming to prepare the U.S. site's TRDS machinery for a significant ramp in production which is critical to meeting 2008 and 2009 production and sales demands for the petitioner's Penryn and Silverthorne 45nm microprocessor products. Counsel stresses that "[the petitioner] cannot mass produce its products without the proper installation, validation, and configuration of the TRDS machinery. The critical nature of the 45 nanometer (P1266) technology products coupled with the essential function of the TRDS process demonstrate the significance of [the petitioner's] reliance on [the beneficiary's] specialized knowledge."

Counsel further states:

> [The beneficiary] is *not* merely a skilled worker; rather, she is a key employee whose expertise regarding an essential process in the production of [the petitioner's] products is required in the U.S. to ready the production capacity for products vital to [the petitioner's] competitiveness in the industry. [The petitioner] would not undergo the significant expense of temporarily transferring [the beneficiary] to the U.S. so that she can perform a routine task that any other competent employee can accomplish. Based on her specialized knowledge, [the petitioner] *requires* [the beneficiary] in the U.S. to prepare the U.S. site for the upcoming ramp in production.
>
> Ultimately, the significance of the products at hand and the crucial aspect of the TRDS process establish the specialized knowledge required for the L-1B petition. Contrary to [the director's] conclusion, the purpose of [the beneficiary's] travel to the U.S. requires more than mere skill and involves more than physical or skilled labor.

Counsel contends that the director's decision should be reversed because the director ignored the "probative evidence" it requested to establish specialized knowledge, which counsel asserts was included in the petitioner's response to the RFE. Counsel states that the director requested such evidence based on a need to make comparisons between the beneficiary's knowledge and the remainder of the petitioner's workforce and then ignored the evidence submitted in response. Specifically, counsel states:

> In the denial, [the director] fails to analyze, let alone address, the responsibilities of the assignment, the significance of the TRDS process, or the critical nature of the products. [The director] handled the L-1B petition and subsequent RFE response without analysis of or reference to evidence or data, and opted to simply conclude that [the beneficiary] did not possess specialized knowledge. This lack of analysis is particularly evidence [*sic*] with the employee data [the petitioner] provided in response to the specific requests in the RFE. [The director] fails to explain why the significant employee data that [the petitioner] provided does not differentiate the beneficiary from [the petitioner's] remaining workforce.

Counsel requests that in light of the director's failure to consider the petitioner's response to the RFE, the director's decision should be overturned.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary has specialized knowledge or that she has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Looking to the language of the statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act, Congress has provided USCIS with an ambiguous definition. In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

> This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf.* Westen, *The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).[2]

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the principles of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23,* 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, the AAO must look to the language of section 214(c)(2)(B) itself, that is, the terms "special" and "advanced." Like the courts, the AAO customarily turns to dictionaries for help in determining whether a word in a statute has a plain or common meaning. *See, e.g., In re A.H. Robins Co.*, 109 F.3d 965, 967-68 (4th Cir. 1997) (using *Webster's Dictionary* for "therefore"). According to *Webster's New College Dictionary*, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." *Webster's New College Dictionary*, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to

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[2] Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, 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." *See* 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 (Nov. 12, 1969).

Neither in 1970 nor in 1990 did Congress provide a controlling, unambiguous definition of "specialized knowledge," and a narrow interpretation is consistent with so much of the legislative intent as it is possible to determine. H. Rep. No. 91-851 at 6, 1970 U.S.C.C.A.N. at 2754. This interpretation is consistent with legislative history, which has been largely supportive of a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge,"

Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). 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. In other words, specialized knowledge generally requires more than a short period of experience; otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and establish by a preponderance of the evidence that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

In examining the specialized knowledge 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 job description of the services to be performed sufficient to establish specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be

employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim, particularly with respect to the beneficiary's employment with the foreign entity. The petitioner not sufficiently described and documented any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other manufacturing technicians employed by the petitioning company. 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)).

Therefore, the petitioner's claim primarily fails on an evidentiary basis. As noted above, counsel asserts that "the petitioner's statements/documentation regarding employment, the critical need for the beneficiary's services, and the beneficiary's training and education are the applicable and appropriate 'hard evidence' of specialized knowledge." The record as presently constituted contains little of the applicable and appropriate "hard evidence" to which counsel refers, and specifically contains little information regarding the beneficiary's employment with the foreign entity, and no documentation of the "vital on-site, supplier and [company]-provided training programs" that provided the beneficiary with the claimed specialized knowledge. This evidence is critical, as the petitioner claims that the beneficiary's specific training and experience render her one of only 17 employees within the petitioner's multinational organization who are readily able to perform the proposed services in the United States. The petitioner's initial filing contained little more than conclusory assertions regarding the beneficiary's specialized knowledge.

For example, the petitioner indicates that the beneficiary currently serves in the position of manufacturing technician at the foreign entity's Manila, Philippines manufacturing facility, where some 1,700 other employees hold the same job title. However, the petitioner has not specified whether or for how long she has been responsible for TRDS-related activities for the Penryn and Silverthorne microprocessors, how her role in the manufacturing process differs from other technicians assigned to the same product, or how the knowledge and experience required for manufacturing this product differs from that required for other microprocessor products which are produced using the same or similar tools and methods. Such background information regarding the beneficiary's employment is important given the claim that the beneficiary has developed a highly unusual skill set that is rare within the organization.

Furthermore, the petitioner's initial description of the beneficiary's position with the foreign entity consisted of a single sentence. Specifically, the petitioner stated that the beneficiary "is responsible for functions associated with wafer production, including equipments operation, process and training, running qualitative lots, ensuring high standard product." The petitioner did not indicate that the beneficiary has experience in installing and qualifying the specific tools and equipment used to manufacture the Penryn and Silverthorne processors. The petitioner went on to state that the beneficiary is "at a more advanced level than other employees" at the same worksite with the same job title, noting that the beneficiary acquired "an advanced and specialized knowledge of "1266 process technology, [the company's] standard operating procedures, [the petitioner's] equipment installation, qualification, maintenance and operation, and collecting and evaluating data to determine and implement adjustments and optimization."

The AAO notes that the petitioner provided little basis for its assertion that the beneficiary's knowledge is "more advanced" that that of similarly-employed workers, who would also complete company training in the petitioner's products and processes, nor did it provide any documentation of the beneficiary's claimed training.

Therefore, the director asked the petitioner to explain how the beneficiary's duties performed abroad are different from those of other workers in the same type of position, and to explain how the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known by the petitioner's employees working in the same field. The director noted that the petitioner should submit "probative evidence to corroborate the statements made in its initial filing." It should be noted that this request was separate from the director's request for evidence regarding the number of similarly-employed workers in the United States and abroad, and the number of L-1B visa holders located at the U.S. facility to which the beneficiary will be transferred.

In response to the director's request for evidence as to how the beneficiary's training or experience differs from those of other employees in the petitioner's workforce, the petitioner emphasized that the beneficiary's particular specialized knowledge is "the in depth, on-the-job use of [the petitioner's] TRDS tools and equipment within the die prep assembly process in relation to [the company's] P1266 Penryn and Silverthorne microprocessors." The petitioner noted that the specific tools and equipment were recently transferred from the Assembly and Test Manufacturing site in the Philippines to the Aloha, Oregon site. The petitioner emphasized that the knowledge could not be easily transferred or taught to a company employee working with a different business group or with different equipment tools. Finally, the petitioner indicated that the specific equipment is the "Alphasem SWISSLINE 9021MT." The petitioner acknowledged that this equipment is used by other U.S. and foreign employers; however, the petitioner emphasized that it has been "configured specifically for [the company's] manufacturing needs and production cycle," and therefore is "native" to the petitioning company.

The petitioner has not identified whether the petitioner's U.S. employees are completely unfamiliar with this specific equipment, or whether they are simply inexperienced in using this equipment in the manufacture of the Penryn and Silverthorne microprocessors. This information is critical, as the petitioner indicates that the U.S. site is preparing for "increased production," which raises questions as to whether the Aloha, Oregon site already manufactures P1266 processors. The U.S. worksite has clearly been manufacturing some type of microprocessors, presumably using similar highly sophisticated equipment and tools. The petitioner has not adequately explained how the equipment, installation methods, set up, qualification and operation of the equipment differs from product to product such that the knowledge cannot be easily transferred. Overall, there is a lack of detail in the petitioner's explanations regarding the beneficiary's claimed specialized knowledge, and therefore, insufficient context in which to make a reasoned determination that her knowledge can be considered "special" or "advanced" within the company. Given the lack of detail and the lack of any supporting evidence beyond the statements of counsel and the petitioner's human resources manager, the AAO agrees that there is a lack of "probative evidence."

The petitioner's claim that the beneficiary's knowledge is special or advanced derives from its claim that she is one of only 17 employees who responded to a "worldwide request" for company employees possessing the specialized knowledge needed to complete the installation, qualification and maintenance of the TRDS equipment/tools. The petitioner offered no further explanation or documentation in relation to this worldwide request, nor did it explain why such a "worldwide" request was issued. This information seems to conflict with the petitioner's claim that the knowledge required for the U.S. position is concentrated among a small number of manufacturing technicians in the Philippines. The petitioner simply stated that the beneficiary's duties are different from those of other manufacturing technicians "because her duties have focused solely on

TRDS equipment/tools and their actual utilization as operated at the Philippines ATM site."

As noted by the director, this explanation does not adequately distinguish the beneficiary's duties from the other approximately 1,700 manufacturing technicians working at the Philippines ATM site. There is no indication as to how many of these Philippines technicians are assigned to the Penryn and Silverthorne products, or how different aspects of the manufacturing process are divided among such employees. The petitioner's broad assertions raise more questions than they answer regarding the nature and extent of the beneficiary's claimed specialized knowledge and her status as a key employee within the foreign entity.

As noted above, the petitioner has provided no detailed description of the beneficiary's ten-year employment history with the foreign entity, or the claimed "on-site, supplier and [company]-provided training programs" that provided her with the specific knowledge of the "particular assembly die process and TRDS tools in relation to the production of P1266 microprocessors." It is also not clear when the Philippines entity started manufacturing such processors, or whether the beneficiary has been employed in a position utilizing the claimed specialized knowledge for one full year.

If, as stated by the petitioner, the beneficiary's specialized knowledge is solely based on her experience with a narrow aspect of the P1266 microprocessor manufacturing process that is possessed by only 16 other people within the multinational corporation, then it is reasonable to expect the petitioner to be able to explain exactly what that knowledge is, what makes it "special" within the company, when and how the beneficiary gained it, and how much experience she has in the role of manufacturing technician assigned to the specific Penryn and Silverthorne microprocessor products. At a minimum, the petitioner must establish that the beneficiary has been employed in a capacity involving the claimed specialized knowledge related to TRDS tools installation and qualification for P1266 processes for at least one year at the time the petition was filed.

Overall, the petitioner's response to the RFE offered little evidence to corroborate its initial claim that the beneficiary "is at a more advanced level than other employees at the [company's] Philippines site who have the same job title," other than explaining that all manufacturing technicians are assigned to specific products within particular divisions within larger business groups and therefore have acquired product and project-specific knowledge that is not shared by other persons with the same job title. The director specifically requested "probative evidence" to corroborate the claims made in the initial filing regarding the beneficiary's advanced knowledge of products and processes and her level of training and experience. The petitioner's response did not directly address these concerns or include supporting evidence to substantiate its claims regarding the beneficiary's classroom and on-the-job training which form the basis of the 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)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has not established that the instant beneficiary has "advanced knowledge" of the company's processes and procedures.

Therefore, the remaining question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary products and processes alone constitutes specialized knowledge. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the

beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification.

Reviewing the precedent decisions that preceded the Immigration Act of 1990, there are a number of conclusions that were not based on the superseded regulatory definition, and therefore continue to apply to the adjudication of L-1B specialized knowledge petitions. In 1981, the INS recognized that "[t]he modern workplace requires a high proportion of technicians and specialists." The agency concluded that:

> Most employees today are specialists and have been trained and given specialized knowledge. However, in view of the [legislative history], it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees. The House Report indicates the employee must be a "key" person and associates this employee with "managerial personnel."

Matter of Colley, 18 I&N Dec. at 119-20.

In a subsequent decision, the INS looked to the legislative history of the 1970 Act and concluded that a "broad definition which would include skilled workers and technicians was not discussed, thus the limited legislative history available therefore indicates that an expansive reading of the 'specialized knowledge' provision is not warranted." *Matter of Penner*, 18 I&N Dec. at 51. The decision continued:

> [I]n view of the House Report, it cannot be concluded that all employees with any level of specialized knowledge or performing highly technical duties are eligible for classification as intra-company transferees. Such a conclusion would permit extremely large numbers of persons to qualify for the "L-1" visa. The House Report indicates that the employee must be a "key" person and "the numbers will not be large."

Id. at 53.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself, will not equal "special knowledge." USCIS must interpret specialized knowledge to require more than fundamental job skills or a short period of experience.

The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." However, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company. If all similarly employed workers within the petitioner's organization receive essentially the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by other manufacturing technicians employed by the petitioning organization. The fact that the beneficiary and a select group of workers possess a very specific set of skills does not alone establish that the beneficiary's knowledge is indeed special or advanced. All employees can be said to possess unique skill sets to some degree. Moreover, the proprietary or unique qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Here, based on the petitioner's representations, each manufacturing technician within the petitioner's organization is assigned to work on a specific component of a specific product within a specific division within a specific business group of the company and therefore the knowledge possessed by each technician, even those assigned to the same product, is uncommon.

Given this scenario, it appears that any manufacturing technician employed by the petitioner's group of companies would be deemed to have specialized knowledge, because they would all have "narrowly tailored" knowledge that is relatively rare within the company. This interpretation of "specialized knowledge" is untenable as it would essentially allow the petitioner to utilize the L-1B classification for virtually any employee who had one year of experience. Rather, the petitioner must establish that qualities of the particular process or product require an individual to have knowledge beyond what is common among its workforce, or to establish that the beneficiary has advanced knowledge of the product. This has not been established in this matter. The fact that other workers may not have the same level of experience with a particular product is not enough to equate to special or advanced knowledge if the gap could be closed by the petitioner by simply revealing the information to a similarly trained or experienced employee who has worked on a similar product. While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among a small subset of workers, will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce.

The AAO acknowledges counsel's assertion regarding the essential nature of the process to be carried out by the beneficiary, and counsel's assertion that the fact the beneficiary was selected for the U.S. assignment points to her status as a critical employee. The AAO does not doubt that the beneficiary is a valuable employee who is capable of performing the work described, nor does it doubt that the work is important to the petitioner's manufacturing efforts. As discussed above, beneficiaries of L-1B petitions should be more than merely skilled, but rather must be shown to carry out key processes or functions. Based on the context of the term "specialized knowledge" within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

In this case, the petitioner has only established that the beneficiary is an experienced employee who fills a position the petitioner considers important. However, the beneficiary has been and will be working as a technician. While it is the beneficiary's actual job duties and not her job title that determine whether she possesses specialized knowledge, it is evident that as one of 1,700 technicians working for the foreign entity in the manufacturing field, she does not play a leading role in the development or manufacture of the petitioner's products. Rather, it is likely that she works under the direction of manufacturing engineers and supervisors and follows standard procedures in performing her job duties. The petitioner has not established

that the beneficiary performs unusual duties or that she is employed primarily to carry out a key process or function. *See Matter of Penner*, 18 I&N Dec. at 52.

Therefore, the claim that the petitioner does not employ manufacturing technicians with exactly the same experience as the beneficiary in Aloha, Oregon who could readily perform the intended duties does not automatically lead to a conclusion that the instant beneficiary must possess specialized or advanced knowledge. Contrary to counsel's assertions on appeal, the petitioner did not distinguish the beneficiary in terms of her training and experience and the record remains devoid of information regarding her claimed on-site training, ten years of on-the-job training, and the duties she performs at the foreign entity that put her "at a level above her peers."

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 requires specialized knowledge. Accordingly, the petition will be denied.

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.