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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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DATE: JUL 26 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 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"), U.S.C. § 1101(a)(15)(L). The petitioner, a New York corporation established in January 2008, states that it intends to operate a seafood import and distribution business. It claims to be a branch office of [redacted].[1] The petitioner seeks to employ the beneficiary in the position of Quality Controller in its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner states that the beneficiary "possesses special knowledge of the petitioning organization's product, service, equipment and an advanced level of knowledge in the organization's processes and procedures." Specifically, counsel asserts that the beneficiary has knowledge of "operational techniques and activities that are used to fulfill requirements for quality of the company's products," and that it is essential that he be available to provide training to employees hired by the new U.S. company.

I. The Law

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.

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[1] Although the petitioner describes the petitioner's relationship to the foreign entity as a "branch" relationship, the evidence submitted establishes that the two companies are affiliates based on common ownership by the same two individuals, pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(L)(*2*).

(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 regulation at 8 C.F.R. § 214.2(l)(3)(vi) states that if the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

Under section 101(a)(15)(L) of the Act, an alien is eligible for classification as a nonimmigrant if the alien, among other things, will be rendering services to the petitioning employer "in a capacity that is managerial, executive, or involves specialized knowledge." Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

> 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.

II. Specialized Knowledge

The sole issue addressed by the director 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).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 30, 2008. The petitioner indicated on the Form I-129 that the beneficiary has been employed in the position of quality controller with its Sri Lankan parent company since May 2005. The petitioner indicates that the beneficiary worked as a quality controller for "various fish enterprises in Sri Lanka" between 1985 and 2005.

In a letter submitted in support of the petition, the petitioner described the beneficiary's experience and qualifications as follows:

> [The beneficiary] is a very stable and quiet person, who significantly contributed to the success of the business through very hard and honest work. His experience along with his marketing education and ability to predict the market makes him a very valuable employee for [the foreign entity]. [The beneficiary] works as a Quality Controller. He checks the quality of the fresh tuna fish and other sea food that the [foreign entity] exports to make sure that every shipment is up to par with the high standards of the company. His service is very essential for continuous running of this business and therefore his presence in the United States branch is extremely important. [The beneficiary] started working in the sea food industry when he was very young; his experience is significant to the development of the company in Sri Lanka and in the United States.

The petitioner further stated that the beneficiary's "great experience and knowledge of the profession qualifies him for this type of visa, especially that he has been employed in the same position for the foreign-based 'mother' company of [the petitioner] during the past three years." The petitioner stated that the beneficiary "possesses specialized knowledge of the petitioning organization's product, service, equipment and an advanced level of knowledge in the organization's processes and procedures."

Finally, the petitioner provided the following information regarding the proffered position of quality controller:

> The quality of the fish and seafood products is of major concern to food processors and public health authorities. The word "quality" embraces a lot of meanings such as safety, gastronomic delights, purity, nutrition, consistency, honesty (e.g. in labeling), value, product excellence. [The beneficiary] as a Quality Controller . . . has been engaged in the operational techniques and activities that are used to fulfill requirements for quality of the company's products. He is also involved in procedures for product identification and trace ability and the process control. Process control means that the quality of the final product shall be specified and documented to ensure that they are carried out under controlled conditions. He also prepares the products for testing and inspections and is responsible for handling, storage, packaging and delivery to prevent damage or deterioration of the products.

The petitioner indicated that it is being established for the import and wholesale of seafood products to other U.S. companies, as well as selling such products on the retail market to individual customers. The petitioner stated its intention to temporarily transfer the beneficiary and other seafood specialists from Sri Lanka to provided training to U.S. employees.

The director issued a request for additional evidence ("RFE") on January 12, 2009, in which he instructed the petitioner to submit, *inter alia*, the following: (1) additional evidence demonstrating that the beneficiary's proposed job duties in the United States require specialized knowledge compared to other similarly employed workers in his field; (2) a statement discussing the type and amount of training needed for an individual to be able to adequately perform the duties of the proposed position, along with evidence that the beneficiary completed such training; and (3) evidence showing that the beneficiary's knowledge is not generally known by practitioners in the beneficiary's field, or that he has an advanced level of the company's processes and procedures in relation to others.

In a response letter dated March 24, 2009, the petitioner explained that it considers certain employees within the organization as providers of "special services." In this regard, the petitioner stated:

> The Quality Controllers must be specially mentioned, as our establishment, on the most part, is dependent on their experience as well as their expertise. Thanks to the invaluable services rendered by them [the foreign entity] by now has been able to open up a branch in the United States of America for export of sea food and live fish from [the foreign entity]. . . .
>
> * * *
>
> We must mention that Quality Control plays a prominent part in this venture that cannot be anticipated from unskilled workers but only from experts who are specialized and experienced in quality controlling.
>
> Going into detailed explanations, for example, quality control of Tuna fish is performed with a little piece of flesh obtained from the tuna to observe its colour, softness or hardness and the smell emanated from tiny particles to ascertain that the fish is free of diceases [*sic*]. Some fish, to the naked eye, may look fresh and healthy, though they may be contaminated due to illness that may worsen with time. Likewise, different methods are used to test the quality of different kinds of fish. As such, [the petitioner] will fail in their responsibility of supplying products of the highest quality to the United States unless the expertise of quality controllers are available, though having a large work force to operate the business.
>
> Hence, it is essential that we entrust quality control of our products in New York, USA, to [the beneficiary], the most senior quality controller at [the foreign entity] so as to ensure we distribute quality products to our clients in the U.S.

The petitioner further addressed its staffing requirements in its business plan, also submitted in response to the RFE:

> It is the intent of our business that we set a warehouse her[e] in USA and have fresh fish arrive here by means of cargo. We need our quality control people, who need to be specially trained in detecting and classifying the fish into category of excellence. This is where we make our margin and can result in paying our employees a salary.

> It is important the quality of individual who is hired by our corporation because it can take up to four years of specialized training to understand this business. The only way to understand the work in this profession is to be a[n] apprentice under a senior for many years. We have such persons in our corporation in Sri Lanka. I need few of those trained individuals if [*sic*] this new business in order for the USA bases corporation to be a success.

The director denied the petition on April 22, 2009, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director emphasized that the evidence submitted at the time of filing and in response to the RFE failed to establish that the beneficiary's knowledge or expertise is significantly different from that of other similarly employed workers within the petitioning organization or within the seafood industry. The director observed that the petitioner had failed to establish that the beneficiary underwent any company-specific training, and otherwise failed to explain why any other qualified employee from outside the organization could not fill the position.

On appeal, counsel describes the beneficiary as a "valuable employee" whose "professional experience and knowledge will benefit the US branch in New York once the Petition is approved." Counsel contends that the newly opened branch may fail if the beneficiary's services cannot be secured. Counsel submits a statement that is essentially identical to the petitioner's initial supporting letter, along with a copy of the company's previously submitted business plan. The petitioner also submits a letter from the foreign entity requesting approval of the petition based on the fact that the beneficiary "is vastly experienced in sea food Quality Checking (Quality Control)."

In support of the appeal, the petitioner submits a copy of the beneficiary's primary and secondary school records from Sri Lanka, and a certification of employment from [redacted], Director of [redacted] (Pvt.) Ltd., which employed the beneficiary as a "general worker" from July 2003 until January 2005, and as a seafood quality controller from January 2005 until April 2005. [redacted] referenced the "practical training and experience" the beneficiary obtained during his tenure and stated that the beneficiary "has wide knowledge and hands-on know-how of Quality Checking (Quality Control) of sea foods."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring specialized knowledge.

The Standard for Specialized Knowledge

Looking to the language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. 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 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

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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.

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'r. 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.

Analysis

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "specialized" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The decision of the director will be affirmed as it relates to this issue and the appeal will be dismissed.

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.

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. The petitioner has not identified any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced seafood quality controllers employed by the petitioning organization or by other employers in the petitioner's industry. While the petitioner has identified the beneficiary as a valuable employee with an important role to play in the U.S. company, the petitioner failed to articulate, with specificity, the nature of any claimed specialized knowledge the beneficiary may possess. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 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 claims that its quality controllers "need to be specially trained into detecting and classifying the fish," and notes that "it can take up to four years of specialized training to understand this business." The petitioner notes that the position cannot be performed by an unskilled worker and notes that different methods must be used to test the quality of different types of fish. However, the petitioner has not differentiated its classification and testing methods or quality standards from those of any other seafood company. Merely claiming that the beneficiary is familiar with quality control, testing and classification processes and standards is insufficient if those standards are not materially different from those that are generally known and used by similarly experienced workers in the industry. Moreover, the petitioner spoke in general terms regarding the amount and type of training required to become a seafood quality controller, without specifying that the beneficiary received any specialized training with the petitioner's organization or providing evidence of the completion of such training. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

The employment certificate from [redacted] submitted on appeal suggests that the beneficiary gained the relevant practical training and experience and his "wide knowledge" of sea food quality control prior to joining the petitioner's foreign affiliate in 2005. The petitioner indicates that the beneficiary had an additional 17 years of experience in the seafood industry prior to joining the foreign entity, which further supports a conclusion that the beneficiary possesses the knowledge and expertise required to perform the duties of a quality controller with the foreign entity at the time he was hired. Such duties may be complex or advanced compared to those performed by an unskilled seafood worker, but the knowledge applied cannot be considered specialized knowledge that is specific to the petitioning organization.

It is reasonable to believe that the petitioner's industry is highly regulated in the United States and Sri Lanka with quality control and grading standards that must be met by any licensed seafood processer. As the petitioner has not specified the amount or type of training its quality controllers receive in the company's own methods, tools or procedures for inspection, or even specified the existence or use of any company-specific tools, methods or procedures, it cannot be concluded that its processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced seafood quality controller. Overall, the evidence submitted does not establish that knowledge of the petitioner's quality control, testing or classification methods is so complex that it could not be readily transferred to similarly trained and experienced employees from outside the petitioning organization.

To establish eligibility in this proceeding, the petitioner must establish that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes and procedures and that the position requires such knowledge. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D).

In this regard, the petitioner relies on a claim that the beneficiary is the "most senior" quality controller employed by the foreign entity. The record shows that the foreign entity, which was established in the early 1990s, had employed the beneficiary for nearly four years as of the date of filing. The evidence submitted does not demonstrate a progression in his skills, assignments or level of authority during his tenure with the company or suggest that he has achieved a role that is reserved for those with an advanced knowledge of the company's policies and procedures. It is unclear at what point in the beneficiary's tenure he was considered to have acquired specialized knowledge. The petitioner has also not provided any information that would assist USCIS in

comparing the beneficiary's skills and knowledge to that of other similarly employed workers within the organization.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." USCIS must interpret specialized knowledge to require more than fundamental job skills or a short period of experience. However, an expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

Although it is accurate to say that the statute does not require that the advanced knowledge be narrowly held throughout the company, 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. Here, the petitioner's argued standard for advanced knowledge appears to require nothing more than an extended period of service performing duties related to the U.S. position, qualifications that may be widely held by the petitioner's Sri Lankan workforce.

It is also 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'r 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)). 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." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

> A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

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

Here, the petitioner continually claims that quality controllers and other seafood processing specialists like the beneficiary are of crucial importance to the petitioner's new business in the United States. The AAO does not question the value of the beneficiary's services or the petitioner's preference to have its trusted foreign workforce train U.S. workers as they are hired. However, the petitioner has not provided any information pertaining to others employed by the petitioner, despite the director's specific request for such information. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other employees. Without such evidence, the AAO cannot conclude that the beneficiary's knowledge is "advanced"

and, for the reasons discussed above, cannot accept the blanket assertion that all quality controllers employed by the foreign entity possess "advanced knowledge" of the petitioner's processes and procedures.

The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of seafood quality control procedures is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be a skilled and important employee of the organization. The AAO does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his duties for the foreign entity for several years. However, the successful completion of one's job duties does not distinguish the beneficiary as an employee possessing advanced knowledge of the petitioner's processes and procedures, nor does it establish employment in a specialized knowledge capacity with the foreign entity.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. While the position of quality controller may require a comprehensive knowledge of seafood quality testing and classification methods, the petitioner has not established that this position requires "specialized knowledge" as defined in the regulations and the Act.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

II. Physical Premises for New Office

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner has submitted evidence that it has secured sufficient physical premises to house the new office in the United States, pursuant to 8 C.F.R. § 214.2(l)(3)(vi)(A).

The petitioner indicated its mailing address as '[redacted] on the Form I-129, and stated that the beneficiary would be working at this address. The record contains a business certificate issued to the company which indicates that this address is also the residential address of [redacted], one of the petitioner's shareholders. The petitioner has not submitted a copy of its lease agreement or title for this property, described its physical space requirements for its seafood import and distribution business, or submitted any other evidence related to the secured premises. Rather, the petitioner's business plan merely states that the company "plans to set a warehouse" in the United States. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). As the petitioner has not established that it has secured a commercial premises sufficient for operating the type of proposed business, the petitioner has not satisfied the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(vi)(A). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

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

ORDER: The appeal is dismissed.