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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

U.S. Citizenship and Immigration Services

[redacted]

b7

DATE: JUN 17 2011 Office: CALIFORNIA SERVICE CENTER Date: [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, 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 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 seafood processing company, is a subsidiary of [redacted]. The petitioner seeks to employ the beneficiary in the position of Seafood Processing Technical Advisor for a period of three years. The petitioner indicates that the beneficiary will work onsite at seafood processing plants operated by its affiliates and suppliers.

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 emphasizes that the beneficiary has 27 years of experience as a seafood processing specialist for the petitioner's parent company and has a very advanced level of knowledge about the petitioner's seafood processing systems and techniques and the special requirements of the Japanese market. Counsel contends that the director erred in concluding that the beneficiary possesses knowledge or performs duties that are common in the petitioner's industry. Counsel submits a brief and copies of previously provided evidence in support of the appeal.

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.

(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.

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.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

> An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

II. Specialized Knowledge

The first 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 January 30, 2009. The petitioner indicated on the Form I-129 that the beneficiary has been employed in the position of seafood processing technician for the petitioner's parent company and its affiliates since March 1981, where he has been engaged in seafood processing of bottom fish, crab, Pollock roe and salmon roe. The petitioner stated that his role as a seafood processing technical advisor for the U.S. company will require him to "provide technical advice and assistance on processing of Pollock roe, surimi and crab for export to Japan and other countries."

In a letter dated January 23, 2009, the petitioner described the beneficiary's proposed role as follows:

> [The beneficiary] will provide technical advice and assistance in connection with the seafood processing operations of our U.S. subsidiaries and suppliers in Alaska. He will make sure that the seafood products we purchase for export to Japan meet the quality control standards of [the parent company] and the Japanese market. He will inspect the raw materials and work in progress, he will recommend changes and adjustments to the seafood processing equipment, he will supervise and train the factoyr workers, and he will troubleshoot problems and issues that arise during the seafood processing operation. [The beneficiary] will also make recommendations concerning ongoing quality control and continuous product improvement measures.
>
> [The beneficiary's] initial assignment will be to supervise the quality control of the crab processing operation on the Baronof catcher processor vessel. After that he will be assigned to other seafood processing plants that are owned and operated by our U.S. affiliates and suppliers.

The petitioner provided a description of the seafood processing operations carried out by its U.S. affiliate, Unisea, Inc., and other affiliates, subsidiaries and suppliers. The vessel to which the beneficiary will be assigned, [redacted], produces crab for export to Japan. The petitioner indicated that its agreement with the vessel requires it to place one technical advisor on board to supervise the quality control of the crab being exported, during the months of February and March each year. The petitioner explained that "the Japanese technical advisors play a critical role in ensuring that the products meet the strict standards of the Japanese market and achieve the highest price for the U.S. exporters."

The petitioner stated that its affiliates and suppliers in Alaska produce snow crab, red king crab, blue king crab and brown king crab for the food service industry, retail and other distributors. The petitioner indicated that "crab products exported to Japan require specialists to evaluate the freshness of the raw material and to grade the quality of the crab meat based on the quality of the crab meat, taste, density, size and change of appearance." The petitioner further stated that "the specialists must also provide technical assistance on the use of anti-blackening agents and anti-oxidants, as well as strict temperature control during cooking and freezing."

Finally, the petitioner described the beneficiary's experience as follows:

> He joined [the parent company] in March 1981 and he is one of their most senior Seafood Processing Technicians. From 1981 to 1983, he worked mainly on processing of crab, salmon, salmon roe (salmon eggs), Pollock roe and tuna in shoreside plants in Japan and other countries all over the world. From 1983 to present, he has engaged in processing of crab, salmon roe, herring roe and capelin at shoreside plans in East Canada, Alaska and other countries in Europe.

The petitioner submitted a copy of its parent company's annual report; a company profile for its U.S. affiliate, [redacted] which operates processing facilities in Dutch Harbor, Alaska; general organizational charts depicting the organization of the processing plants; the beneficiary's brief resume; and a letter from the Japan Fish Trader's Association verifying that beneficiary, with 27 years in the industry, has the "necessary experience and knowledge to process and grade Salmon, Pollock Roe, Crab and other marine products which are exported to Japan."

The director issued a request for additional evidence ("RFE") on February 20, 2009, in which she instructed the petitioner to submit, inter alia, the following: (1) a more detailed description of the beneficiary's duties in the U.S.; (2) a more detailed explanation of exactly what is the equipment, product, system, technique, research or service of which the beneficiary has specialized knowledge, along with information regarding whether the product is produced by other employers in the United States and abroad; (3) an explanation of how the duties the beneficiary will perform in the U.S. are special, advanced or otherwise different from those performed by other workers employed by the petitioner or other U.S. employers in the industry; (4) information regarding the training the beneficiary will provide, if applicable; and (5) the impact on the petitioner's business if the petitioner is unable to obtain the beneficiary's services. The director requested similar information with respect to the beneficiary's duties abroad, as well as timelines for the beneficiary's training and experience with the foreign entity. The director advised the petitioner that any assertion that the beneficiary possesses an advanced level of knowledge of the petitioner's processes and procedures must be supported by evidence describing and setting apart that knowledge from the elementary knowledge possessed by others. The director advised that it is the weight and type of evidence that establishes whether or not the beneficiary possesses specialized knowledge.

In a response dated April 2, 2009, counsel further discussed the beneficiary's role and responsibilities as follows:

> Quality control of crab processing involves maintaining freshness and cleanliness as well as proper temperature during the entire process of catching, holding, butchering, gilling, boiling, cooling, chilling, brine freezing, glazing, de-blooding, packing, storing and shipping. Mistakes are costly in terms of the quality of the end product and health and safety of food customers. [The foreign entity] has developed its own processing methods and techniques to ensure the quality of its fresh, cooked and frozen crab products meet the requirements of the Japanese market, including the appearance of the final product which is critical to the reputation of our brand.

In response to the director's request that the petitioner describe any special or advanced duties the beneficiary performs, counsel emphasized that the beneficiary has 27 years of experience in seafood processing, and is one of its most experienced quality control specialists for crab processing having worked for the parent company's

affiliates and suppliers all over the world. Counsel asserted that the quality control responsibilities to be performed "can only be done by a specialist with experience in such type of seafood processing for the Japanese market." Counsel emphasized that most seafood processing work is done by U.S. workers, while the job of the technical advisor is to ensure that the work is done properly and that the quality of the end product meets the standards and requirements of the parent company and the Japanese market. Counsel further indicated that the beneficiary would help to supervise and train U.S. workers, citing high employee turnover as a factor.

In response to the director's query about the impact the beneficiary's absence would have on its business, counsel stated that his inability to undertake the L-1B assignment may result in a reduced price for the U.S. exports sold to the Japanese markets or require the foreign entity to purchase its crab from another supplier in another country where it can ensure the quality control of the crab processing operation.

Finally, with respect to the director's request that the petitioner provide more detailed information regarding the beneficiary's qualifying employment abroad, counsel reiterated that the beneficiary has 27 years of experience in seafood processing operations, making him one of the foreign entity's most experienced employees for crab processing.

In addition, the petitioner submitted a separate statement "explaining how [the beneficiary] possesses all of the characteristics of an employee who has specialized knowledge." In this regard, the petitioner stated that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace, noting that the beneficiary's knowledge about crab processing for the Japanese market "is important to the quality control of the processing operation and the reputation and price of the products exported to Japan."

The petitioner further indicated that the beneficiary is qualified to contribute to the U.S. company's knowledge of foreign operating conditions as a result of specialized knowledge not generally found in the industry. The petitioner explained that the beneficiary will contribute to the knowledge of Japanese crab processing methods at the U.S. plants of the petitioner's affiliates and suppliers, and that his advanced level of knowledge in this area is not generally found in the seafood industry.

In addition, the petitioner stated that the beneficiary's services have been utilized abroad in a capacity involving significant assignments which have enhanced the company's productivity, competitiveness, image or financial position. Specifically, the petitioner indicated that the beneficiary has worked for the foreign entity's affiliates and suppliers all over the world, engaged in the quality control of all aspects of crab processing operations. The petitioner emphasized that mistakes are costly in terms of the quality of the product and the health and safety of food consumers.

The petitioner stated that the beneficiary also possesses knowledge which normally can only be gained through prior experience with the company, noting that the parent company "has developed its own processing methods and techniques to ensure the quality of its fresh, cooked and frozen crab products meet the requirements of the Japanese market, including the appearance of the final product which is critical to the reputation of the brand. The petitioner noted that the beneficiary's knowledge of the company's methods cannot easily be taught or transferred to another person, as it was acquired over a period of 27 years. The petitioner emphasized that there is a high turnover among the Alaskan workforce due to the isolated location and difficult working conditions.

Finally, the petitioner indicated that the beneficiary's 27 years as a crab processing specialist for its parent company has given the beneficiary knowledge of crab processing requirements for the Japanese market that is not generally known in the United States.

In a separate statement, the petitioner noted that, since joining the petitioner's parent company in 1981, the beneficiary has spent most of his career specializing in crab processing. The petitioner noted that the beneficiary "has specialized training in using [the foreign entity's] methods for producing top quality crab products for the Japanese market." The petitioner emphasized that its U.S. affiliates and suppliers have plenty of U.S. workers to perform "regular crab processing work," and that it requires the beneficiary to provide technical assistance and ensure the quality control of the processing operation.

The petitioner's response to the RFE also included a chart outlining the steps in the crab processing operation, from off-loading to cold storage of processed crab. The chart indicates that raw crab section frozen products destined for export to the Japanese market undergo one extra step, "de-blooding," during the process, and are subject to an extra chemical process during the pre-chilling phase to control blackening. The chart indicates that the Japanese authority established a strict residual level for this chemical additive (sulfite) for imported products.

The petitioner summarized the role of the Japanese crab processing specialist as follows:

> Historically speaking, unlike surimi and pollock roe technicians, Japanese crab technicians in the Alaska fishing industry tend to take the buyers' perspective. Crabs are highly valued products and there are many specialized products solely targeted to the Japanese market, such as raw crab sections, small box products with the combination of raw and boiled crabs, the boiled round crab in which the appearance is critical, air-shipped live crabs, and crab guts (kanimiso). Technicians who have the buyers' perspective are needed, not only because buyers need the quality assurance, but also because buying policies vary depending on market conditions, catch and prices. Thus production conditions need to vary complying with those policies.

The petitioner also submitted an "onboard history" for the beneficiary which provides his dates of assignment, ship name, and the types of products with which he worked, since joining the foreign entity in 1981.

The director denied the petition on June 3, 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 duties the beneficiary has performed for the foreign entity appear to have been essentially those of a skilled worker, and require skills and knowledge which is common among seafood processing specialists employed by the foreign entity and others in the seafood processing industry. The director reached a similar conclusion regarding the beneficiary's proposed employment in the United States, noting that the knowledge possessed by seafood processing specialists has not been shown to be unique to a particular employer, but rather appears to be common throughout the petitioner's industry.

On appeal, counsel for the petitioner asserts that the director erred by concluding that the beneficiary is an ordinary skilled worker. Counsel emphasizes that the beneficiary has 27 years of experience working as a seafood processing specialist for the parent company in Japan and "has a very advanced level of knowledge

about the petitioner's seafood processing systems and techniques and the special requirements of the Japanese market." Counsel stresses that the beneficiary's role is "much different that the thousands of other seafood processing workers who are employed at the plants in Alaska," and contends that "the record is clear that the beneficiary has specialized knowledge about the petitioner's products and that he will be employed in a position that requires specialized knowledge about the petitioner's seafood processing systems that are specially designed for the Japanese market."

Counsel incorporates all previously submitted statements provided by the petitioner into his brief and asserts that such statements provide "substantial evidence" concerning the beneficiary's specialized knowledge. Counsel contends that USCIS simply overlooked or ignored the evidence submitted, and emphasizes that its parent company "has developed its own processing methods and techniques to ensure the quality of its fresh, cooked and frozen crab products meet the requirements of the Japanese market, including the appearance of the final product which is critical to the reputation of its brand."

Finally, counsel notes that USCIS had recently approved 13 similar L-1B petitions for the petitioner's seafood processing specialists, thereby making the denial of the instant petition "arbitrary, capricious, and an abuse of discretion."

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).[1]
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

[1] 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.

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 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.

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. 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 or documented any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced seafood processing specialists employed by the petitioning organization or in the petitioner's industry. 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 failed to articulate, with specificity, the nature of the claimed specialized knowledge.

The petitioner claims that the beneficiary's specialized knowledge is based upon his knowledge of the petitioner's parent company's seafood processing systems and techniques, quality control standards and the special requirements of the Japanese market. However, the petitioner has not differentiated its processing methods or quality standards from those of any other seafood company. Merely claiming that the beneficiary is familiar with internal processes and standards is insufficient if those standards are not materially different from those that are generally known and used by similarly experienced workers. While the petitioner claimed that the beneficiary underwent training in its internal processes, the petitioner has not specified the amount or type of training the beneficiary completed or provided evidence that he completed the 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

It is reasonable to believe that the petitioner's industry is highly regulated in the United States and Japan, with quality control standards that must be met by any licensed seafood processer. While the petitioner provided a fairly detailed description of the steps that occur during crab processing at its affiliate's Alaskan plant, and noted that a few additional steps are needed for certain products exported to Japan, it remains unclear what, if any, specialized knowledge is required to supervise these operations, or what differences exist between the Japanese market and other markets in terms of seafood processing, appearance and quality control. Japan is the leading export market for Alaska's seafood, and seafood is Alaska's largest export commodity.[2] Given the long-standing trade relationship, the petitioner's claim that Alaskan seafood processors, apparently including its own U.S. based affiliate which has been operating a plant in Alaska since 1974, are unfamiliar with Japanese market requirements is not entirely credible. Even if the petitioner could establish that knowledge of Japanese market requirements constitutes specialized knowledge for the purposes of employment in the United States, the petitioner is also required to establish that the beneficiary's qualifying period of employment abroad involved specialized knowledge. The petitioner has not claimed that Japanese seafood processing specialists working in Japan are unfamiliar with Japanese market requirements, and the AAO assumes that such knowledge is in fact commonly held among the foreign entity's workforce.

As the petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and 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 processing specialist who is familiar with the Alaskan and Japanese seafood industries.

Overall, the evidence submitted does not establish that knowledge of the petitioner's processing or quality control techniques or familiarity with the Japanese seafood market constitutes specialized knowledge or that this knowledge 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 the beneficiary's long tenure with the foreign entity working in crab and other seafood processing operations all over the world. The petitioner has not explained in any detail the specific capacities in which the beneficiary has worked, and it is not clear to what extent he has been employed as a regular processing technician, or to what extent he has been employed in a "specialist" or "technical advisor" position. The evidence submitted does not demonstrate a progression in his skills, assignments or level of authority over his long 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 27-year 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

[2] *See* "2007 Exports," State of Alaska, Office of the Governor < http://www.gov.state.ak.us/trade/pdf/State% 20of%20 Alaska%202007%20Annual%20Report%20of%20Exports.pdf> (accessed on June 1, 2011, copy incorporated into record of proceeding)

of other similarly employed workers within the organization, many of which may have a similarly long tenure with the company.

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 Japanese 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. 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*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

> A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' 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, through counsel, continually claims that Japanese seafood processing technicians like the beneficiary are of crucial importance to the petitioner's business. However, the petitioner has not provided any information pertaining to others employed by the petitioner, despite the director's specific request for such information. 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).

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 Japanese processing specialists employed by the foreign entity possess "advanced knowledge" of the petitioner's processes and procedures.

It appears that the petitioner's business thrives on providing high quality seafood to the Japanese market. Its practice of providing a small number of native Japanese technicians to U.S.-based seafood processing operations undertaken by its affiliates and suppliers may assist the company in reaching its objectives. However, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of processing crabs and crab products for the Japanese market 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 many 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 seafood processing technical advisor may require a comprehensive knowledge of the manner in which to process crab and other seafood products in a manner which conforms to the requirements of the Japanese export market and the petitioner's quality standards, 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.

Finally, the AAO acknowledges counsel's claim that USCIS has approved over a dozen similar petitions filed by the petitioning company on behalf of Japanese seafood processing specialists. The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the instant beneficiary is ineligible for the benefit sought. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been

demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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.