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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
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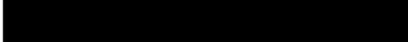
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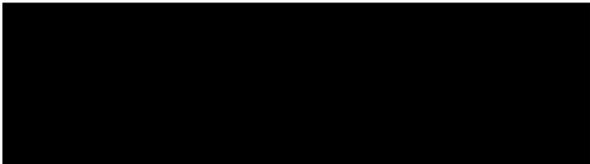
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 
 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:



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"), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a New Jersey-based information technology company, claims to be a subsidiary of the beneficiary's foreign employer, [REDACTED] located in India. The petitioner seeks to employ the beneficiary in the position of "BI Specialist" for a period of one year. The petitioner indicates that the beneficiary will be assigned to work at the San Francisco, California facilities of an unaffiliated employer, [REDACTED], a client of the petitioner's U.S. subsidiary.

The director denied the petition, concluding that the petitioner: (1) failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge; and (2) failed to establish that the beneficiary's employment at the unaffiliated employer's facilities would be permissible under section 214(c)(2)(F) of the Act, as created by the L-1 Visa Reform Act of 2004. The director observed that the beneficiary "will be primarily engaged in work on the client's systems" and not on processes that are specific to the petitioning company.

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 asserts that the beneficiary possesses "an advanced level of knowledge and expertise in the project that he is being transferred to work on, since he is currently working on that project." Counsel further contends that the director improperly mischaracterized and excluded the beneficiary's "client-specific knowledge" in determining whether he possesses specialized knowledge as defined in the statute and regulations. Counsel submits a brief and additional 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).

Due to the nature of the L-1 Visa Reform Act, the two issues raised by the director – whether the petitioner has established that the beneficiary possesses the requisite "specialized knowledge" and whether the requirements of the L-1 Visa Reform Act have been satisfied – are independent but legally intertwined. Prior to evaluating whether the L-1 Visa Reform Act applies, an adjudicator must determine whether the beneficiary is employed in a specialized knowledge capacity. If the beneficiary is not employed in this capacity, the petition may be denied on this basis and there is no need to address the requirements of the L-1 Visa Reform Act. Because the director also found that the beneficiary is ineligible under Section 214(c)(2)(F)(ii) of the Act, the AAO will nevertheless discuss both specialized knowledge and the elements of the L-1 Visa Reform Act. Upon review, the AAO affirms the director's decision to deny the petition.

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, June 17, 2010. In a letter dated June 16, 2010, the petitioner indicated that the beneficiary will be employed in the position of "BI Specialist" assigned to work at the facilities of [REDACTED] on a project being executed by [REDACTED], a subsidiary of the petitioning company which was acquired in October 2009.

The petitioner stated that the beneficiary has been employed by its Indian parent company since August 2006 in the position of Technical Consultant. The petitioner further described the beneficiary's relevant experience as follows:

For the past approximately 3 months he has been working on the Business Infrastructure Transformation ("BIT") project for our client [REDACTED]. This is a project being executed by [REDACTED] and is estimated to require 70,000+ person hours (or 9,000 person days). Currently we are deploying approximately 60 individuals (1/3 offsite, offshore). [The beneficiary] and [REDACTED] are 2 very small but critical elements of the project. [REDACTED] is undertaking [REDACTED]. We have and will continue to develop an enterprise wide BI strategy that will involve creating a reporting and decision support solution using [REDACTED] with data from [REDACTED]. We will continue to leverage BI standard delivered content to the maximum extent possible for this implementation. We will provide functional guidance and consultation services including design, development, configuration, testing, documentation and training of semantic layer creation and reporting in [REDACTED]. [REDACTED]. We will provide specialists to install and modify [REDACTED] tools to suite [sic] the reporting requirements.

The petitioner stated that the beneficiary has been and will be performing the following duties for the BIT project:

- Interacting with business users for understanding of business process to design the data flow in BI.
- Working with users for design and mapping the source data (R3/nonR3) to target data Sources in BI.
- Extensively worked on Data warehouse workbench.
- Involved in creating and maintaining Info objects, Info Cubes, DSO Objects, Transformations (Expert, Start and End Routine – ABAP codes), DTP, Multi Providers, Data sources and Info Packages, Views.
- Involved in Creation of reports using Query Designer. Used Free Characteristics, Filters Restricted Key figures, calculated key figures, Formulas Structures, Variables, Exceptions and Conditions.
- Worked on Business Explorer on Variable with Customer Exit, Formula variable, Text variable with ABAP codes.
- Built reporting requirements for FI, HR, SD Application in BI7 environment.
- Support the functional design team with technical inputs.
- Working on Data Extraction, Data Modeling, Business Explorer and Reports
- Design BEx reports for the Customized scenarios with Virtual Characteristics.
- Worked with the users for defining the reporting needs and helped design/develop queries using BEx reporting features like variables, exception and conditions in FI (Balance sheet, Profit and Loss, Forecast).
- Extensively working with global team for Business testing and issue on queries.

The petitioner indicated that, prior to his assignment to the BIT project for [REDACTED], the beneficiary performed similar duties on the "ASB BI Implementation project" for another client of the foreign entity.

Finally, the petitioner further described the beneficiary's qualifications and specialized knowledge as follows:

[The beneficiary] has the necessary background and skills to perform the job duties outlined above. More importantly, though, he has the specialized and advanced knowledge of this project for [REDACTED] and on the required tasks, since he has been and currently is working on this project. He is being transferred because of his specialized and advanced knowledge of the project. It would be impossible to place another professional in this position without incurring a huge economic detriment. [The beneficiary] has a Bachelor of Science degree from the Osmania University, India, Master of Science degree in Advanced Information Technology. In addition to his educational qualifications, he has over 4 years of total experience of which 2 years and ten months have been with [the foreign entity].

The petitioner submitted a copy of the beneficiary's resume, in which he indicates that he has four years of professional experience in the information technology field, including "strong technical knowledge on SAP BI 7.0" and "SAP assignments in various verticals in the areas of implementation, upgrade and support." The resume indicates that the beneficiary he has worked on a total of eight SAP BI projects since joining the petitioner's parent company in August 2006. The beneficiary lists his software skills as the following: SAP

Netweaver 2004s, SAP BI 7.0, BW 3.5, BW 3.1, BEx, Visual Composer, ECC 6.0, C, C++, ABAP, UML, SAS, SQL, PL/SQL, EAI, and Microsoft Project Management.

The petitioner also provided a copy of the Master Services Agreement between [REDACTED] [REDACTED] which was executed in October 2009, along with a statement of work for the SAP Implementation project.

The director issued a request for additional evidence (RFE) on June 28, 2010, in which he advised the petitioner that the initial evidence did not establish that the beneficiary has been or will be employed in a specialized knowledge capacity. The director instructed the petitioner to provide the following additional information and documentation: (1) a detailed description of the actions and duties the beneficiary will perform on a daily basis; (2) a list of proposed duties which require specialized knowledge, accompanied by an explanation as to why each duty requires a worker with specialized knowledge; (3) an explanation of which processes, procedures, tools, and/or methods the beneficiary will use for each duty and from which company each process, procedures, tool and/or method comes from; (4) clarification regarding how long it takes to train an employee to use the specific tools, procedures, and/or methods utilized and how many workers within the organization possess such knowledge; and (5) an explanation regarding how the beneficiary's training differs from the core training provided to the company's other employees. The director also requested a record from the foreign entity's human resources department detailing the manner in which the beneficiary has gained his specialized knowledge, including documentation evidence training courses in which the beneficiary has enrolled since joining the company, as well as the duration of the courses, the time devoted to training, and certificates of competition for all courses taken. Finally, the director requested a copy of the contract between the petitioning company and [REDACTED]

In a response dated June 29, 2010, the petitioner provided a copy of the "Agreement and Plan of Merger" between the petitioning organization and [REDACTED], and emphasized that [REDACTED] is its wholly-owned subsidiary. The petitioner reiterated its description of the SAP implementation project undertaken for [REDACTED] and the previously submitted description of the beneficiary's job duties. The petitioner further stated:

[The beneficiary's] specialized and advanced knowledge derives from two sources. First, he has been and currently is working on this project as part of the overseas resources, thus, he has specialized and advanced knowledge of the project. Second, he is part of a team and he has been working as part of the team on this project. Thus, he is an integral component of the team. We would be unable to replace him with a local SAP resource because, however qualified that individual may be, he or she would have to spend considerable time to understand the concept, the project dimensions and the execution as well as develop relationships with the key resources in the project. We just do not have that kind of time since the goal is to complete this \$44 million project within a year. We are not transferring [the beneficiary] because he has expertise in SAP ERP (which is a highly complex system) but because he has the specialized and advanced knowledge of the project and the team which knowledge he has acquired while working on this project as an integral component of the team. Any delay in executing the project will be costly.

The petitioner re-submitted the Master Services Agreement between [REDACTED] as well as the Statement of Work for the SAP Implementation project. The only new evidence submitted was a chart depicting the [REDACTED] on which the beneficiary is listed as a member of the [REDACTED]

The director denied the petition on July 6, 2010, 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 petitioner failed to respond to most of the requests set forth in the RFE. The director did acknowledge the statements the petitioner made in its letter dated June 29, 2010 regarding the beneficiary's experience and familiarity with the particular client project on which he would work in the United States. The director noted that "it appears that a majority of the beneficiary's purported specialized knowledge hinges upon his acquired knowledge of [the] client's internal processes," rather than upon any specialized or advanced knowledge of the petitioner's tools, processes or procedures.

On appeal, counsel for the petitioner reiterates the arguments the petitioner made in response to the director's request for evidence with respect to the beneficiary's claimed specialized knowledge. Counsel questions why the director's decision fails to apply, or even mention, two legacy Immigration and Naturalization Service (INS) memoranda which, counsel claims, "succinctly lay out" USCIS's interpretation of what constitutes specialized and advanced knowledge.¹ Relying on the memoranda, counsel asserts that the petitioner has established that the beneficiary "possesses knowledge of a product or process which cannot be easily transferred or taught to another individual," and "possesses knowledge which can be gained only through prior experience" with the petitioning organization.

With respect to the director's finding that the beneficiary's knowledge is primarily "client-specific," counsel asserts that "this beneficiary is being transferred not because of any 'client-specific knowledge' but because he has specialized and advanced knowledge of executing the project (i.e., developing proprietary software) for this particular client i.e. [REDACTED]. Counsel further emphasizes that the "prime goal of a business enterprise is to sell a good or service," and that "having established the importance of a client to the existence of a business, "specialized knowledge of a product, service, etc. is in its application to servicing a client or manufacturing or manufacturing and selling a product to a customer."

The petitioner also submits a letter dated July 22, 2010 in support of the appeal. The petitioner discusses the [REDACTED] project and the beneficiary's role as a member of the core [REDACTED] team assigned to the Business Intelligence portion of the project. The petitioner states:

We transfer some off-site resources to continue to work on projects that they have been working on. We do that since it is economically sensible to do so. If we pick someone locally, to train him, it would be impractical, time consuming and very expensive to send him overseas. To provide him on the job training in the US would also be impractical, time

¹ See Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Special Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum"); Memorandum of Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (Dec. 20, 2002)(hereinafter "Ohata memorandum").

consuming, unfeasible and very expensive. He is being transferred to continue to work on the family of projects that he has been working on for [REDACTED], as part of the overseas resources.

Referring to the Puleo memorandum, the petitioner further describes the beneficiary's specialized knowledge as follows:

1. [The beneficiary] possesses knowledge that is valuable to our competitiveness in the market place. This is a huge [REDACTED] for us and [the beneficiary] is a key part of the project. Completing this project on a timely and cost efficient basis clearly enhances our competitiveness in the market place, since we are a SAP services provider.
2. Clearly, this special knowledge, i.e., working on an aspect of the [REDACTED] project is not generally found in the US marketplace of SAP professionals. [The beneficiary] is working on the project so, has the special knowledge of that aspect of the [REDACTED]
3. The [REDACTED] assignment is a significant assignment since it is such a large portion of our gross revenues and business.
4. Clearly, this knowledge possessed by [the beneficiary] can only be gained through prior experience working with us on the [REDACTED]
5. This knowledge can normally be gained only by working with us on this particular project since this knowledge is necessary to work on the project in the USA.
6. [The beneficiary] possesses knowledge of the project and process which knowledge can only be learnt by working on the project, hence not easy to transfer to another individual.
7. The knowledge that [the beneficiary] has is of the project and process which is of a sophisticated nature. It is not generally known in the US in the sense that someone would have to work on this project to know about it. Clearly, our US based employees working on the project should have this knowledge but cannot substitute [the beneficiary] since he is already working on the project.

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

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. 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.

The inherently subjective standard serves to make the L-1B classification more flexible and capable of responding to changing economic models. Depending on the facts of the specific case, a petitioner may put forward a novel argument that is based on the employer's specific situation. Or, as in the present case, a knowledgeable petitioner may choose to rely on aspects of the INS memoranda to frame his or her argument.

The Puleo Memorandum provided various scenarios, hypothetical examples, and a list of six "possible characteristics" of aliens that would possess specialized knowledge. Adding a gloss beyond the plain language of the statute or the definitions of "special" and "advanced," the memorandum surmised that specialized knowledge "would be difficult to impart to another individual without significant economic inconvenience." *Id.* at p.3. The memorandum also stressed that the "examples and scenarios are presented as general guidelines for officers" and that the examples are not "all inclusive." *Id.* at pp. 3-4. Therefore, even though the Puleo Memorandum does not constitute a binding legal "standard," it does describe possible attributes that would support a claim of specialized knowledge. However, the petitioner would be unwise to simply parrot the memorandum, without submitting supporting evidence, and expect USCIS to approve a petition.

The Puleo Memorandum concluded with a note about the burden of proof and evidentiary requirements for the classification:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level

of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at p.4.

Pursuant to section 291 of the Act, the petitioner bears the burden of proof in these proceedings. The petitioner must submit relevant, probative, and credible evidence that would lead the director to believe that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Analysis

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "special" 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 SAP technical consultants employed by the petitioning organization or in the industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'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 knowledge is derived from three months of experience with the SAP Implementation project for the U.S. client, Dolby Technologies, and approximately four years of experience working on similar client projects since he joined the foreign entity. The petitioner indicates that the beneficiary performs his duties using widely available [REDACTED] and acknowledges that this knowledge does not form the basis of his specialized knowledge. The petitioner does not specifically claim

that his specialized knowledge derives from any company-specific methods, processes or procedures for software or systems development or project implementation. The director provided the petitioner with ample opportunity to describe any company-specific processes, procedures, tools and methods the beneficiary has used and will use in carrying out his duties as a member of the Dolby SAP Implementation project team. The petitioner did not respond to this line of inquiry and the AAO presumes that the petitioner makes no claim of specialized knowledge based on the petitioner's own internal or proprietary processes, tools or methods.

Rather, the petitioner states that the beneficiary possesses "specialized and advanced knowledge of the project and the team" working on the project. The petitioner asserts that an otherwise qualified [REDACTED] "would have to spend considerable time to understand the concept, the project dimensions and the execution as well as develop relationships with the key resources in the project."

Counsel argues that the beneficiary's familiarity with the client project should be considered knowledge that is specific to the petitioner's interests and therefore "specialized." There are several flaws in counsel's argument. First, the petitioner has not identified with any specificity the aspects of the project "dimensions," "concept" or "execution" that would distinguish it from any other [REDACTED] carried out by the petitioner or other [REDACTED]. The beneficiary's duties performed for the [REDACTED] are not demonstrably different from duties he performed on similar projects for different clients. We acknowledge that any client project executed, by the petitioning company or any other technology consulting company, is unique in that it reflects the particular technological needs and business requirements of the individual client requesting the consulting services. USCIS cannot find that an employee's knowledge of a client project, and the relationships established through working on such a project, without more, are sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any information technology consultant who worked on any client project with on-site and off-shore components.

The beneficiary's familiarity with the client's systems and project requirements, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that he possesses specialized knowledge. All information technology consultants within the petitioning organization would reasonably be familiar with its internal processes and methodologies for carrying out client projects and would be familiar with the resources assigned to projects on which they have worked. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients. The fact that the beneficiary possesses very specific experience with a particular international client's project does not establish that the beneficiary's knowledge is indeed special or advanced if the same could be said about the majority of the petitioner's workforce.

In addition, even assuming *arguendo* that the beneficiary's familiarity with the client's systems or products, or more generally, his experience with a specific project, could be considered "specialized knowledge" relative to the petitioner, it is unclear how the beneficiary, who has worked on the [REDACTED] for only three months, is considered to have "advanced" knowledge of the petitioner's processes and methodologies relative to the project. The petitioner has not provided any details regarding the specific [REDACTED] that would distinguish the beneficiary's role from those performed by any other [REDACTED] consultant. The beneficiary is not assigned to the project as a team leader or project manager and does not appear to have played a role in determining the project concept or dimensions. Although such information was requested by the director, the petitioner has not identified how the skills needed to perform the proposed

job duties would require specialized knowledge relative to either the petitioning company or the project. 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).

Again, 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 and explain how and when the beneficiary gained such knowledge. Merely stating that he will continue working on the same client project is not sufficient to satisfy the petitioner's burden of proof.

The petitioner has repeatedly stated that it would be "impractical, time consuming, unfeasible and very expensive" to train an employee to perform the beneficiary's duties, and suggested that any new hire would require overseas or on-the-job training. Although the petitioner suggests that this knowledge can be acquired through formal or on-the-job training, the petitioner has not indicated that the beneficiary himself received any such training in either the petitioner's internal policies or procedures or in the subject matter related to his project assignment. The director specifically requested the beneficiary's training records and requested that the petitioner explain whether the beneficiary's training differed from that provided to other similarly employed workers. The petitioner did not respond to this line of inquiry and the AAO finds it reasonable to conclude that the beneficiary likely received minimal, if any, internal training that is relevant to his job duties. Despite his lack of company-specific training or experience, the beneficiary was hired by the foreign entity and immediately assigned to the role of [REDACTED] responsible for implementing an [REDACTED] according to a client's requirements.

This fact directly undermines the petitioner's claims. It is apparent that the beneficiary was not given any training prior to his overseas assignment as [REDACTED] for a client project. The minimal evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's processes and methodologies, or specific training related to their project assignments. Again, there is no indication that the beneficiary not been fully performing the duties of an [REDACTED] [REDACTED] since the date he was hired by the foreign entity.

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 [REDACTED] who had no prior experience with the petitioner's family of companies. 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)). Further, since it appears the beneficiary was able to assume such a role on a client project with no prior work experience within the company, then it is reasonable to question to what extent the knowledge required to perform the duties is truly specific to the petitioning organization, and not general knowledge the beneficiary gained during his prior professional work experience or as part of his academic training. Based on the evidence submitted, it appears the petitioner's internal processes and project implementation practices can be readily learned on-the-job by employees who otherwise possess the requisite technical and functional background in the information technology field.

All employees can be said to possess unique skills or experience to some degree. Moreover, any proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to one component of a specific client project, or the same level of knowledge of a client's own internal products, services or processes is not enough to establish the beneficiary as an employee possessing specialized knowledge. 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, (i.e., one of only two BI specialists assigned to a specific project team) 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. Here, the petitioner essentially states that it considers all employees with experience on a specific client project to have specialized or advanced knowledge of that project. Given that the petitioner is a consulting company, most of its technical staff would meet the company's definition of a specialized knowledge worker. The fact that other workers outside of the petitioning organization may not have very specific knowledge of client projects and the personnel assigned to them is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the details of the project to a similarly experienced [REDACTED] with the applicable technical and functional expertise.

It is appropriate for USCIS 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. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of LeBlanc*, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." It is equally true, however, 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.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during his two years of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced relative to a specific client project are unpersuasive. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's tools and processes for implementing projects. By the petitioner's logic, any of

them would qualify for L-1B classification if offered a position working on the same project in the United States.

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."³ 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.

The AAO does not dispute the possibility that the beneficiary is a skilled employee who has been, and would be, a valuable asset to the petitioner. As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers who are similarly employed elsewhere. The beneficiary's duties and technical skills demonstrate that he possesses knowledge that is common among [REDACTED]. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

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.

Finally, regarding the petitioner's reliance, in part, on the Puleo memorandum, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that USCIS is bound to base its decision on the above-referenced Puleo and Ohata memoranda, the memoranda were issued as guidance to assist USCIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized

³ As observed above, the AAO notes that the precedent decisions that predate the 1990 Act are not categorically superseded by the statutory definition of specialized knowledge, and the general issues and case facts themselves remain cogent as examples of how the INS applied the law to the real world facts of individual adjudications. USCIS must distinguish between skilled workers and specialized knowledge workers when making a determination on an L-1B visa petition. The distinction between skilled and specialized workers has been a recurring issue in the L-1B program and is discussed at length in the INS precedent decisions, including *Matter of Penner*. See 18 I&N Dec. at 50-53. (discussing the legislative history and prior precedents as they relate to the distinction between skilled and specialized knowledge workers).

knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

Therefore, based on the evidence presented and applying the statute, regulations, and binding precedents, the petitioner has not established that the beneficiary has specialized knowledge or that he has been or would be employed in a capacity involving specialized knowledge. Accordingly, the appeal will be dismissed.

III. L-1 Visa Reform Act

Assuming *arguendo* that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition. One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <http://judiciary.senate.gov/member_statement.cfm?id=878&wit_id=3355> (accessed on September 5, 2008).

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to 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. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. at 534.

If the petitioner fails to establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1).

The petitioner indicates that the beneficiary will work at the San Francisco, California facility of the client, [REDACTED], and report to an employee of the petitioning organization based at the Folsom, California offices of the petitioner's affiliate, [REDACTED].

The director specifically addressed whether the petitioner has established that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act. As discussed below, the petition fails to meet the requirements of this section of the Act.

In denying the petition, the director observed that "the majority of the beneficiary's purported specialized knowledge hinges upon his acquired knowledge of [the] client's internal processes."

On appeal, counsel objects to the director's conclusion and asserts that the beneficiary "has specialized and advanced knowledge of executing the project (i.e., developing proprietary software) for this particular client, i.e., [REDACTED] rather than merely "client-specific knowledge."

Counsel's assertions are not persuasive. The petitioner has not established that the beneficiary's placement at the unaffiliated employer's worksite is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

The petitioner must demonstrate in the first instance that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is *specific to the petitioning employer*. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.

As discussed above, the petitioner has not established that the implementation of [REDACTED] requires knowledge that is specific to the petitioning company. Specifically, the petitioner has not shown that any of the software or systems to be developed and implemented will require the application of the petitioner's own technologies. The evidence of record does not support a conclusion that the beneficiary will be implementing, developing, maintaining, or supporting systems or software developed by the petitioning company, or providing a service that other information technology companies with comparable capabilities could not provide. The primary purpose of the assignment is for the beneficiary to implement a component of [REDACTED] for a client according to the client's specifications.

While it is possible that the beneficiary here possesses knowledge that is directly related to both the petitioner and the unaffiliated employer's product or service, it is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that requires knowledge specific to the petitioner. Here, the petitioner has failed to provide corroborating evidence demonstrating that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Counsel suggests that the proposed position does not involve labor for hire because the petitioner has been retained to provide specific project-related work and not merely general IT or programming services. However, if the "project related work" involves the unaffiliated employer essentially outsourcing an entire IT function to the petitioner, then the employees assigned to the "project related work" are not providing a product or service which necessitates specialized knowledge that is *specific to the petitioning employer*. There is no reference to any system, processes, tools or methodologies of the petitioning company in either the Master Services Agreement or Statement of Work. The primary purpose of the assignment is for the petitioner's project team to install, configure and support the unaffiliated employer's internal [REDACTED]. Any IT consulting company specializing in [REDACTED] could likely provide a team of employees to deliver the exact same services, using its own internal project delivery tools and methodologies, and achieve the same results for the unaffiliated employer.

In conclusion, there is no evidence that the petitioner is providing the beneficiary's services in connection with the sale of any technology products or that the beneficiary's offsite employment requires any specialized

knowledge specific to the petitioner's operations. Instead, the limited evidence in the record related to the nature of the contract indicates that the petitioner is providing general [REDACTED] to the unaffiliated employer. The fact that such services appear to be delivered on a large-scale "project" basis is insufficient to preclude a finding that such services essentially constitute "labor for hire."

Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, and the petition may not be approved.

The petition will be denied and the appeal will be 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 he or she shows 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.