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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]

DATE: FEB 2 8 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, ("the director") initially approved the nonimmigrant visa petition. Upon subsequent review, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition, and ultimately revoked approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee 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 Washington corporation, is a seafood processing company and a wholly owned subsidiary of a company located in Japan. The petitioner seeks to employ the beneficiary as a seafood processing technical advisor for a period of three years.

As observed above, the director initially approved the petition but upon subsequent review revoked approval, concluding that the petitioner failed to establish: (1) the beneficiary's employment abroad was in a specialized knowledge capacity; and (2) that the beneficiary would be employed in the United States in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director failed to provide a NOIR that included a detailed statement of the grounds for revocation as required by 8 C.F.R. § 214.2(l)(9)(iii)(B) and also failed to explain why the prior approval involved gross error. Counsel also asserts that the record contains ample evidence supporting the prior approval as the beneficiary had been employed abroad and would be employed in the United States in a specialized knowledge capacity, not as an ordinary skilled worker. Counsel submits a brief and additional documentation in support of the appeal.

I. The Law

Under United States Citizenship and Immigration Services' (USCIS) regulations, the approval of an L-1B petition may be revoked on notice under six specific circumstances. The regulation at 8 C.F.R. § 214.2(l)(9)(iii) provides in pertinent part:

> (iii) Revocation on notice.
>
> (A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:
>
> (*1*) One or more entities are no longer qualifying organizations;
> (*2*) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
> (*3*) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;
> (*4*) The statement of facts contained in the petition was not true and correct;
> (*5*) Approval of the petition involved gross error; or

(6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-797 shall be sent to the petitioner with the revocation notice.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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.

The regulation at 8 C.F.R. § 214.2(l)(3) 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.

II. The Issues on Appeal

A. Revocation on Notice

The first issue to be addressed in this matter is whether the director properly complied with the revocation requirements set out at 8 C.F.R. § 214.2(l)(9)(iii).

Counsel asserts that the initial approval of the petition did not involve gross error and thus the NOIR was erroneously issued. Counsel cites an unpublished civil case filed by *et. al.* against the U.S. Department of Justice and legacy Immigration and Naturalization Service (INS) in support of his assertion. Counsel provides a copy of the order of summary judgment issued by the U.S. District Court of the District of Columbia on June 9, 1999 and the docket text pertaining to this civil suit. The order of summary judgment indicates the Vermont Service Center's approval of L1-B visa status for 25 flight attendants did not constitute gross error as that term is used in 8 C.F.R. § 214.2(l)(9)(iii). However, the record does not include the court's analysis in reaching its decision to issue the summary judgment. Counsel also cites and provides a copy of a January 10, 1993 unpublished decision issued by the Associate Commissioner for Examinations (Associate Commissioner) in which this petitioner appealed a revocation decision by the Director, Northern Service Center. The Northern Service Center director revoked approval of an L-1B petition determining that the petitioner's chief surimi technician had not been and would not be employed in a qualifying capacity involving specialized knowledge. The petitioner provided a copy of the Associate Commissioner's decision wherein he sustained the petitioner's appeal.

We observe first that counsel has not provided a copy of the court's analysis in the unpublished district court decision. Accordingly, the AAO is unable to ascertain what elements the district court considered when reaching its decision. Second, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow even the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In this matter as the analysis of the district court is not in the

record, the AAO is unable to even give due consideration to the district judge's reasoning. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Although counsel provided a copy of a 1993 Associate Commissioner decision which contains some facts similar to the matter at hand, we observe that the proffered position in that matter is titled chief surimi technician while the proffered position in this matter is titled seafood processing technical advisor. It is not clear what duties, if any, are relevant to both positions. In addition, the Associate Commissioner referenced specific documents upon which he relied when determining that the petitioner's chief surimi technician position in 1993 was a specialized knowledge position. The current record before the AAO does not contain these same documents. Accordingly, there is no relevant basis upon which to compare the 1993 record and the current record. Moreover, the decision is an unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, 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).

Regarding counsel's assertion that the director in this matter erroneously issued a NOIR, the assertion is not persuasive. Upon review of the term "gross error" we find that the term is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001). Counsel has also provided other definitions of the word "gross" including a definition that the word means "glaringly noticeable" or "out of all measure" or "beyond allowance." We agree that the term "gross error" provokes an acknowledgment that the questioned decision was made in complete error. Accordingly, the error in approving the petition must be an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that is granted contrary to law must be considered an unmitigated error, and therefore a "gross error."

In the context of the L-1B nonimmigrant classification, the phrase "specialized knowledge" is a fundamental requirement for visa eligibility and is defined by the regulation. *See* section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). However, this element of eligibility is not a simple determination or one where there is always an obvious answer. To approve an L-1B petition the record must contain evidence that the beneficiary performed duties in a specialized knowledge capacity and must also include evidence that the proffered position requires the beneficiary to perform duties that involve specialized knowledge. To make this determination United States Citizenship and Immigration Services (USCIS) must examine the record of the beneficiary's past work history, the nature of the petitioner and its claimed affiliates, and detailed information regarding the previous and proposed positions.

In this matter, the USCIS adjudicator issued an approval of the petition on limited facts and without issuing a request for further evidence (RFE). A review of the initial record, as will be further discussed below, does not provide sufficient evidence to determine: (1) that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within three years preceding the filing of the petition; (2) that the beneficiary's prior year of employment abroad was in a position that involved specialized knowledge; and, (3) that the beneficiary would be employed in a specialized knowledge capacity in the United States. Accordingly, upon further review of the record, the director properly issued a NOIR identifying these three areas of specific concern. The initial record before the director was approved in gross error contrary to the eligibility requirements for in the regulations.

Counsel also contends that the specific NOIR issued did not include a detailed statement regarding the specific grounds for the revocation. The purpose of the NOIR is to give the petitioner notice of the "gross error(s)" made in approving the petition. In this matter, the director notified the petitioner that it had not established three required elements to establish eligibility. We observe that the petitioner in rebuttal addressed these three elements and thus counsel's assertion that the petitioner lacked notice of the gross errors made when approving the petition is questionable. That is, the petitioner's assertion, through counsel, that the NOIR did not provide notice of the specific elements it had failed to establish is at odds with the petitioner's actual response. The NOIR issued in this matter provided an opportunity for the petitioner to rebut the stated grounds of revocation. Moreover, the director's revocation decision analyzed the petitioner's rebuttal, providing yet additional insight into the failure to establish essential elements of eligibility and providing the petitioner another opportunity to address these failures on appeal.

Although the director conceded that the petitioner provided evidence in rebuttal sufficient to establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within three years preceding the filing of the petition, the director properly found that the petitioner had not provided sufficient evidence to establish that the beneficiary had been employed in a specialized knowledge capacity abroad and had not provided sufficient evidence to establish that the beneficiary would be employed in the United States in a specialized knowledge capacity. [1]

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[1] The petitioner initially stated that it had employed the beneficiary since 1971 while also indicating that the beneficiary had worked in Alaska and Russia. The petitioner did not provide the dates that the beneficiary worked in Alaska and did not provide documentary evidence that the beneficiary was working for one or more of the petitioner's qualifying affiliated companies while in Alaska. Thus, the initial record did not contain sufficient evidence establishing that the beneficiary had been employed continuously by a qualifying organization for one year in the three years preceding the filing of the petition. In rebuttal, the petitioner provided the beneficiary's employment history on various ships and processing plants, evidence of the wages paid by the petitioner to the beneficiary, and the specific time the beneficiary spent working for the foreign entity during the three years preceding the filing of the petition. The petitioner provided sufficient evidence to rebut the director's NOIR on this specific criterion.

B. Specialized Knowledge

The petitioner indicated on the Form I-129 that it had earned a gross annual income (consolidated) of $700 million and that it employed about 1,000 employees on a consolidated basis when the petition was filed. The petitioner also indicated that the beneficiary has been employed in the position of seafood processing technician for its parent company and its affiliates since April 1971, where he had been engaged in seafood processing of bottom fish, crab, pollock roe and salmon roe. The petitioner also stated that the beneficiary's role as a seafood processing technical advisor for the U.S. company would require him to "[p]rovide technical advice and assistance on processing of pollock roe, surimi and crab for export to Japan and other countries."

In a letter submitted in support of the petition, 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 factory 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 provide technical advice and assistance for the surimi processing operation on the vessel in the Bering Sea. 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 one of its U.S. suppliers, as well as other affiliates, subsidiaries, and suppliers. The petitioner noted that owns and operates three factory trawler vessels, the which employs about 120 U.S. workers, the which employs about 90 U.S. workers, and the which employs about 50 U.S. workers. The petitioner stated that its agreement with required it to provide technical advice and assistance on board each of these factory trawler vessels during the pollock roe and surimi seasons. 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."

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

> He joined [the parent company] in April 1971 and he is one of their most senior Seafood Processing Technicians. From 1971 to 1993, he worked mainly on processing of crab, bottom fish and surimi on board [the parent company's] factory trawlers in the Bering Sea and also at shoreside plants in Alaska. From 1993 to present, he has engaged in

> surimi and Pollock roe processing on a seasonal basis on board the and as well as at shoreside plants of [the parent company's] subsidiary, in Dutch Harbor, Alaska.

The petitioner submitted a copy of its parent company's annual report; the petitioner's consolidated financial statements as well as the consolidated financial statements of a company profile for the petitioner's parent company and its U.S. affiliate, which operates processing facilities in Dutch Harbor, Alaska; general organizational charts depicting the organization of the processing plants; a technical assistance agreement with the owner of three factory trawlers; the beneficiary's brief resume; and a letter from the verifying that the beneficiary, with 37 years in the industry, has the "necessary experience and knowledge to process and grade salted Crab, Salmon Roe, Herring Roe and other marine products which are exported to Japan."

On the basis of the limited information provided, the director erroneously approved the petition. We reiterate that the information in the record was insufficient to establish the eligibility requirements for approval and accordingly, the approval was made contrary to the statute and regulations and accordingly was made in gross error. In its response to the NOIR, the petitioner referenced this beneficiary and five other beneficiaries when discussing prior employment and the proffered jobs. The petitioner noted:

> Most of the technicians began by working on [the parent company's] surimi factory trawlers and other seafood processing vessels during the 1970s and 1980s. They underwent specialized training in [the parent company's] surimi processing, pollock roe processing, crab processing, bacteria control systems, and other quality control issues relating to seafood processing operations.

The petitioner noted further:

> The beneficiaries are not sent to provide labor for hire and they are not simply skilled workers with ordinary knowledge that is common among other seafood processing workers in the industry. The beneficiaries all have over 30 years of experience working as seafood processing specialists for our parent company in Japan and they have a very advanced level of knowledge about our seafood processing systems and techniques and the special requirements of the Japanese market.

The petitioner emphasized:

> The role of the beneficiaries is much different than the thousands of other seafood processing workers who are employed at the plants in Alaska. They will inspect the raw materials and work in progress, recommend changes and adjustments to the seafood processing equipment, supervise and train the factory workers, and troubleshoot problems and issues that arise during the seafood processing operation. They will also make recommendations concerning ongoing quality control and continuous product improvement measures.

In a separate statement, the petitioner provided information specifically about the beneficiary in this matter. The petitioner emphasized that the beneficiary has 38 years of experience in surimi processing and that he is one of the parent company's most senior surimi specialists. The petitioner stated that the beneficiary had an advanced level of knowledge about surimi processing that is generally not found in the U.S. industry. The petitioner indicated that the beneficiary possesses knowledge about the parent company's methods which can only be gained through prior experience with that company. The petitioner claimed that the beneficiary's knowledge of surimi processing, acquired over a period of 38 years, cannot be easily be taught or transferred to another person. The petitioner added that the beneficiary possesses knowledge of surimi processing that is of a sophisticated nature and is not generally known in the United States. The petitioner emphasized that the beneficiary would be working on the surimi processing vessel which has about 120 U.S. workers who do most of the processing work and that the parent company sends only two surimi specialists to provide technical assistance on the vessel.[2]

The petitioner also included a letter from noted that the role of the Japanese specialists is completely different from regular seafood processing workers as their role is to provide technical advice and assistance for the surimi and pollock roe processing operation to make sure the products meet the quality control standards of the petitioner's parent company and the special requirements of the Japanese market. stated that he is familiar with the seafood processing operations at most of the major plants in Alaska and confirmed that the beneficiaries are not coming to work as ordinary skilled workers. provided an organizational chart of its operations, and noted that most seafood processing workers are new to the company and have little experience. He noted the difficulties in maintaining an experienced and well-trained U.S. workforce, due to high turnover among the processing personnel.

The petitioner also provided a letter from the a supplier that conducts seafood processing operations on fishing vessels. The director of human resources of stated that the petitioner's Japanese technicians are not its employees and are needed to check the quality and condition of the large quantities of raw material and to make quick decisions. The human resources director added: that its pollock roe and surimi processing operations utilize very sophisticated equipment that must be constantly adjusted and fine-tuned based on the condition and quality of the raw material and work in process; that the processing involves the use of special additives and chemicals provided by the petitioner's parent company; and no one in its plant has as much experience or such advanced knowledge about the special techniques for making pollock roe and surimi for the Japanese market as the Japanese technicians provided by the petitioner.

In addition, the petitioner provided a translated copy of the table of contents of a 224-page manual for the parent company's surimi processing. We observe that the table of contents listed eight pages out of 224 pages as pages that relate to quality management standards and operations and inspections for each product. The petitioner also re-submitted the letter from the verifying that beneficiary, with 37 years in the industry, has the "necessary experience and knowledge to process

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[2] The petitioner initially stated that the a factory trawler owned by one of its suppliers employed approximately 90 U.S. workers.

and grade salted Crab, Salmon Roe, Herring Roe and other marine products which are exported to Japan."

The petitioner's response further included charts outlining the steps in the surimi processing operation, from off-loading to cold storage and indicating that during off-season, surimi technicians participate in quality market research. The chart indicates that "unique expertise" is needed in the bleaching, refining, dehydrating, and additives blending steps of the operation. Specifically, the outline explains that expert technicians are needed to manage adjustments to equipment on the production line, and to weigh a variety of factors that could impact the quality of the finished product. The petitioner emphasized that equipment and systems used were adapted from those used by its parent company. The petitioner also included a chart for pollock roe processing.

The petitioner also explained that it sends only two surimi specialists and two pollock roe specialists to provide technical assistance on each vessel and that the specialists oversee the entire surimi and pollock roe operations. The petitioner indicated that the specialists make sure the equipment is working and adjusted properly and they also constantly check the quality of the work in process and make adjustments as needed based on their judgment and observation. The petitioner noted that the specialists also train and supervise U.S. workers on the surimi and pollock roe processing.

Upon review of the information provided in rebuttal to the NOIR, the director revoked approval of the petition.

On appeal, counsel incorporates all previously submitted statements provided by the petitioner into his brief and asserts that such statements provide "ample evidence" supporting the approval of the petition and a finding that the beneficiary had been and would be employed in the United States in a specialized knowledge capacity. Counsel contends that the Japanese specialists are not just skilled labor but are employed primarily for their ability to carry out a key process or function which is important or essential to the business, namely to provide technical advice and assistance to ensure the quality control of the processing of specialty seafood products produced for the Japanese market.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge position.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge. 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. *Id.* 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 matter 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 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 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. The petitioner has not, for example, specified the amount or type of training the beneficiary completed or provided evidence that he completed any training with the foreign entity. [3]

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 and accredited seafood processer. While the petitioner provided a fairly detailed description of the steps that occur during surimi processing at its affiliate's Alaskan plant, and referenced similar processing on board factory trawlers 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. While the petitioner describes pollock surimi as a "specialty Japanese product" the petitioner also indicates that the product is used in such common products as imitation crab and lobster meat, and noted its popularity in the United States and Canada.

Japan is one of the two leading export market for Alaska's seafood, and seafood is Alaska's largest export commodity.[4] Given the long-standing trade relationship, the petitioner's claim that Alaskan seafood processors, apparently including its own U.S. based affiliate and suppliers, are unfamiliar with Japanese market requirements is not 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 it is reasonable to believe 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 equipment 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.

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[3] The petitioner notes in the work history provided for this beneficiary that he received two weeks of training in December 1992, one week referenced as "pollock surimi" and one week referenced as "leader." These references do not provide sufficient information to analyze the beneficiary's training and the record does not include documentary evidence substantiating the training. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

[4] *See* "2011 Exports," State of Alaska, Office of the Governor <http://gov.alaska.gov/parnell_media/resources_files/alaskaexportcharts2011.pdf> (accessed on January 28, 2013, copy incorporated into the record of proceeding).

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 may alternatively 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 seafood processing operations in Japan and the United States. 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 how long he has been employed as a "specialist" or in a "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 nearly 40-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 of other similarly employed workers within the organization, many of which appear to also have a similarly long tenure with the company.

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.

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. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from other similarly-employed workers. While the petitioner continually seeks to distinguish between the beneficiary and the thousands of ordinary seasonal skilled seafood processing workers employed by its affiliate and suppliers in Alaska, it does not attempt to distinguish his knowledge or duties from those possessed by more experienced and higher-level personnel such as quality control specialists or managers. 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 specialists 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 seafood processing 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 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. 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. In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For this reason, the appeal will be dismissed.

Finally, the AAO acknowledges counsel's claim that USCIS has approved a number of similar petitions filed by the petitioning company on behalf of Japanese seafood processing specialists in the past. However, as observed above, 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 upon further review of the record of proceeding concluded that the instant beneficiary is ineligible for the benefit sought. The director 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).

IV. Conclusion

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.