

Adjudicator's Field Manual

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Chapter 32 Petitions for Intracompany Transferees (L classification).

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32.1 Background

The L classification, which originated with the 1970 amendments to the Immigration and Nationality Act, Pub. L. 91-225, was designed to facilitate the temporary transfer of foreign nationals' management, executive, and specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate.

The Immigration Act of 1990 (IMMACT), Pub. L. 101-649, made several modifications to the existing L category. Section 123 of IMMACT changed the definition of manager in section 101(a)(44) of the Act to also include “functional managers”, or those managers that manage an essential function within the company.

Section 205(b) of IMMACT eliminated L nonimmigrants from being “presumed to be an immigrant” under section 214(b) of the Act.

Section 206 of IMMACT specified new limitations on the period of stay for L visa holders: seven years for executives/managers and five years for specialized knowledge personnel. That section also modified the definition of “affiliate” to specifically include the international partnership agreements used by international accounting firms. Section 206 also mandated a “blanket” petition process to accelerate the admission of individual L nonimmigrants. Finally, section 206 modified the prior qualifying experience requirement to allow one year of the prior three (rather than the immediate prior year) to qualify an L-1 employee.

Section 6 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95, further expanded the definition of “affiliate” to qualify for L-1 classification employees of international management consulting firms (most of which had been spun off from international accounting firms bearing the same names).

32.2 Terminology

(a) Definition .

(a) General .

One of the keys to the adjudication of a petition for L-1 classification is the understanding of the meaning of several key terms. These terms have been defined over the years through various documents, including statutes, regulations, precedent decisions, and policy memoranda. While the following chart provides a brief explanation of these terms, it may be necessary to review the full document (statute, regulation, or precedent decision) in order to understand all the nuances of any given term.

Term	Statutory Reference	Regulatory Reference	Precedent Decision(s)
Intracompany transferee	§ 101(a)(15)(L)	8 CFR 214.2(l)(1)(ii)(A)	
Executive	§ 101(a)(44)(A) INA	8 CFR 214.2(l)(1)(ii)(C)	
Manager	§ 101(a)(44)(B) INA	8 CFR 214.2(l)(1)(ii)(B)	13 I&N Dec. 654
Specialized knowledge	§ 214(c)(2)(B) INA	8 CFR 214.2(l)(1)(ii)(D) and (E)	18 I&N Dec. 117, 18 I&N Dec. 49, 17 I&N Dec. 248, 13 I&N Dec. 618
New office		8 CFR 214.2(l)(1)(ii)(F)	13 I&N Dec. 816
Doing business		8 CFR 214.2(l)(1)(ii)(H)	
Qualifying organization		8 CFR 214.2(l)(1)(ii)(G)	19 I&N Dec. 362 , 18 I&N Dec. 289, 18 I&N Dec. 13, 17 I&N Dec. 631
Parent		8 CFR 214.2(l)(1)(ii)(I)	15 I&N Dec. 5, 13 I&N Dec. 647

Branch		8 CFR 214.2(l)(1)(ii)(J)	
Subsidiary		8 CFR 214.2(l)(1)(ii)(K)	
Affiliate	§ 206(a) of Pub. L. 101-649	8 CFR 214.2(l)(1)(ii)(L)	

(b) Exceptions to General Definitions.

(1) Affiliate, As It Relates to International Accounting Firms or Management Consulting Services.

An entity that is organized outside the United States to provide accounting services or management consulting services shall be considered to be an affiliate of the United States accounting or management consulting partnership if it markets its accounting or management consulting services under the same internationally recognized name directly or indirectly under an agreement with the same worldwide coordinating organization of which the United States accounting or management consulting services partnership is also a member. It is important to note that this definition does not create a separate category of beneficiaries which may use the L intracompany transferee visa category, or the EB-1 Multinational Executives and Managers visa category. This expanded definition originated in 1996 with IIRIRA, Pub. L. 101-649 (for international accounting firms), and the Nursing Relief fo Disadvantaged Areas Act of 1999, Pub. L. 106-95 (for international management consulting firms). It is important to note that there is no relationship between an international accounting firm and a management consulting firm with the same or a similar name.

32.3 Individual L Petition Process

(a) General. (Chapter 32.3 Revised 11/15/2018; PM-602-0167)

(1) Basic Provisions. Section **101(a)(15)(L)** of the Act and regulations at **8 CFR 214.2(l)** are designed to facilitate the temporary transfer of foreign nationals with management, executive, and specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate. Petitioners seeking to classify aliens as intracompany transferees must file a petition on Form I-129 (including the L supplement), or, in the case of a visa-exempt alien, on Form I-129S with USCIS for a determination on whether the alien is eligible for L-1 classification and whether the petitioner is a qualifying organization. An individual L-1 petition is filed at the service center having jurisdiction where the alien will be employed, except that NAFTA cases (discussed in **Chapter 37**) may be filed at Class A ports of entry. General adjudicative principles and procedures described in **Chapter 10** apply. For statistical purposes executives and managers are internally coded (in CLAIMS) L-1A and specialized knowledge employees are coded L-1B, although only "L-1" is used for visa issuance and admission purposes.

(2) Fee Required by Public Law 111-230. Public Law 111-230, enacted August 13, 2010, requires the submission of an additional fee of \$2,250 for certain L-1 petitions.

(A) Application of the Fee. Public Law 111-230:

Requires the submission of an additional fee of \$2,250 for certain L-1A and L-1B petitions, where those petitions are postmarked on or after August 14, 2010;

Applies if:

The L-1 petitioner employs 50 or more employees in the United States; and

More than 50 percent of the petitioner's employees in the United States are in H-1B, L-1A, or L-1B nonimmigrant status; and

Will remain in effect through September 30, 2014.

(B) Definition of employer. To determine who is subject to the additional fee of \$2,250, USCIS will apply the definition of "employer" found at 8 CFR § 214.2(h)(4)(ii), which states:

[A] person, firm, corporation, contractor, or other association, or organization in the United States which:

(1) engages a person to work within the United States;

(2) has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

(3) has an Internal Revenue Service Tax Identification Number.

The use of this definition for purposes of determining the application of this new fee does not extend or authorize its application beyond Public Law 111-230 and the H-1B rules and regulations.

(C) Counting Full-time and Part-time Employees. For the purposes of Public Law 111-230, all employees, whether full-time or part-time, will count towards the calculation of whether an employer is subject to the new fee.

(D) U.S. and Foreign Payrolls. When calculating the percentage of employees in H-1B or L-1 status, all employees in the United States, regardless of whether they are paid through a U.S. or foreign payroll, will count toward the calculation.

(E) Treatment of Petitions Filed Before Publication of Revised Forms. If either an initial petition for L-1 classification or an L-1 petition requesting a change of employer is filed before the revised Form I-129 and Form I-129S are published, the adjudicator will review any explanation or supporting evidence to determine whether the fee required by Public Law 111-230 applies to the petition, as explained in the following chart:

If...	And ...	And ...	And ...	Then ...
The L-1 petition or Form I-129S filed by a visa-exempt individual is postmarked before August 14, 2010	----->			The fee does not apply; adjudicator can adjudicate the case.
The L-1 petition (or Form I-129S filed by a visa-exempt individual) seeking either (a) initial grant of nonimmigrant classification for the beneficiary or (b) authorization for an alien already classified as an L-1 nonimmigrant to change employers is postmarked on or after August 14, 2010 through, and including, September 30, 2014.	The petitioner has paid the fee required by P.L. 111-230 OR the petitioner has attached a statement or evidence that it is exempt from the fee required by P.L. 111-230.	----->		The adjudicator can adjudicate the case.
	The petitioner has not paid the fee required by P.L. 111-230 AND the petitioner has not attached a statement or evidence that it is exempt from the fee required by P.L. 111-230.	The employer has fewer than 50 employees in the United States.	----->	The fee does not apply, the adjudicator can adjudicate the case.
		The employer has 50 or more employees in the United States.	50% or fewer of the employees in the U.S. are in H-1B, L-1A, or L-1B nonimmigrant status.	The fee does not apply, adjudicator can adjudicate the case.
	More than 50% of the employees in the U.S. are in		The fee DOES apply. The adjudicator must issue an	

			H-1B, L-1A, or L-1B nonimmigrant status.	RFE explaining that the petitioner must either submit the fee or provide evidence that it is, in fact, not subject to the fee.
		The adjudicator CANNOT determine from other documents submitted whether the fee required by P.L. 111-230 applies	----->	The adjudicator must issue an RFE explaining the provisions of P.L. 111-230 and informing the petitioner that he or she must submit either the fee or a statement or other evidence as to why the fee does not apply.

(F) Treatment of I-129S. If the fee applies, the petitioner should remit the additional fee to the USCIS office where the Form I-129S is filed.

(G) Composition of Request for Evidence (RFE). If the fee applies but was not collected, or if the adjudicator cannot determine whether the fee applies, the adjudicator should issue an RFE to the petitioner soliciting the additional fee or a statement or other evidence that the fee does not apply. The RFE should also cover any other deficiencies in the filing.

An RFE issued to address only the new fee, should provide the petitioner with a maximum of 30 days to respond to the RFE. If the RFE addresses other deficiencies that would normally allow more time to respond, then the RFE may provide more than 30 days.

The RFE will inform the petitioner that it must submit an additional fee if it employs 50 or more individuals in the United States and over 50% of those employees are in the H-1B, L-1A, or L-1B nonimmigrant status.

The adjudicator must deny the petition if the petitioner fails to respond to the RFE. (Previously submitted fees will not be returned.)

If the petitioner responds to the RFE and indicates that it is not subject to fee, but there are discrepancies that indicate otherwise, further clarifying information may be requested, or in certain cases, a notice of intent to deny (NOID) may be issued.

A petition cannot be approved if the petitioner responds to the RFE and provides evidence that it is subject to the additional fee, but fails to submit the additional fee with the response. (If a petition is denied, previously submitted fees will not be refunded.)

(H) Treatment of Petitions Once Revised Form I-129 and Form I-129S Are Published. After the revised Form I-129 and Form I-129S are implemented, an L-1 petition subject to the additional fee that is submitted without the fee, will be rejected. Rejected filings do not retain a filing date. If, after the revised form is implemented, an adjudicator encounters an L-1 petition that was received without the additional fee and determines that the fee was required, the adjudicator should issue a NOID soliciting the additional fee. Whenever possible, the notice should cover any other deficiencies in the filing.

(I) Submission of Inaccurate Statement(s) by Petitioner to Avoid Payment of Fee. The adjudicator should follow local procedures to refer to the Center Fraud Detection Office (CFDO) any petitions where there is information or documentation to substantiate that the petitioner has inaccurately presented material facts in the petition and supporting documentation to avoid paying the additional fee.

(b) Basic Evidentiary Requirements for an L-1 Petition. Evidence of the following must be submitted to support all petitions filed for L classification:

- There must be a qualifying relationship between the business entity in the United States and the foreign operation which employs the alien abroad;
- For the duration of the alien's stay in the United States as an intracompany transferee, the petitioner must continue to do business both in the United States and in at least one other country, either directly or through a parent, branch, subsidiary, or affiliate.
- Periods of employment in the United States for the petitioning organization may not be used to satisfy the requirement that one continuous year of the past three years (“one-year foreign employment requirement”) has been spent employed abroad by the organization.
- The one-year foreign employment requirement, where the alien must demonstrate continuous employment abroad for one year out of the three preceding years, must be met at the time that the petitioner files the L-1 petition. Note: brief visits for business or pleasure in B-1 or B-2 status do not interrupt the one-year foreign employment requirement.
- Time a beneficiary spent working in the United States “for” a qualifying organization does not count towards the one-year foreign employment requirement; however, this time does result in an adjustment of

the three-year period. A nonimmigrant in the United States will be considered to have come to this country to work “for” the qualifying organization if he or she is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application, such as H-1B or E-2 executive, supervisory, or essential employee. As long as the beneficiary was admitted to work “for” the qualifying organization, his or her U.S. employment for the qualifying organization need not be in a managerial, executive, or specialized knowledge capacity.

- The time a beneficiary spent working while in a dependent status will not result in an adjustment of the three-year period. For example, time spent by a beneficiary in L-2 status will not result in an adjustment of the three-year period, because the beneficiary was admitted as an L-2 to join the L-1 principal and not to work “for” a qualifying organization. Likewise, if a beneficiary was admitted as an F-1 nonimmigrant and later applies for optional practical training (OPT) employment with the qualifying organization, the time spent in F-1 nonimmigrant status will not result in an adjustment to the three-year period, because the purpose of admission was for study and not to work “for” the qualifying organization.

- The time a beneficiary spent in the United States, either not working or working for an unrelated employer, will not result in an adjustment of the three-year period. A two-year break in employment with the qualifying organization during the three years preceding the filing of the L-1 petition will render the beneficiary unable to meet the one-year foreign employment requirement.

- When the petition requests an extension of L-1 status (including a change from L-1A to L-1B status, or a change from L-1B to L-1A 7 status), the requirement must have been met at the time of the filing of the initial L-1 petition.

- The alien's prior year of employment abroad must have been in a managerial, executive, or specialized knowledge capacity. The prospective employment in the United States must also be in a managerial, executive, or specialized knowledge capacity. However, the alien does not have to be transferred to the United States in the same capacity in which he or she was employed abroad. For example, a manager abroad could be transferred to the United States in a specialized knowledge capacity or vice versa. See *Matter of Vaillancourt*, 13 I&N Dec. 654.

The burden is on the petitioner to provide the documentation required to establish eligibility for L classification. The regulations do not require submission of extensive evidence of business relationships or of the alien's prior and proposed employment. In most cases, completion of the items on the petition and supplementary explanations by an authorized official of the petitioning company will suffice. In doubtful or marginal cases, the director may require other appropriate evidence which he or she deems necessary to establish eligibility in a particular case.

Note:

Section **214(h)** of the Act eliminates the need to adjudicate the issue of whether an L nonimmigrant is actually being transferred on a temporary basis. Many such nonimmigrants eventually adjust status or procure an immigrant visa. Also, section **214(b)** eliminates L nonimmigrants from the classes of persons “presumed to be an immigrant.” (However, even before the addition of section 241(h), an L-1 nonimmigrant was not required to maintain a foreign residence which he/she had no intention of abandoning.)

(c) Anti “Job-Shopping” Provisions of the L-1 Visa Reform Act .

Among the provisions of Public Law 108-447 at Division J, Title IV, is the L-1 Visa Reform Act. Section 412(a) of Title IV adds a new section 214(c)(2)(F) to the Immigration and Nationality Act, as amended (Act). New section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either (1) the alien will be “principally” under the “control and supervision” of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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.

Several conditions must be met in order for this ground of ineligibility to apply:

First, the alien worker must be a specialized knowledge worker. The term “specialized knowledge” should be familiar to adjudicators and is defined at **8 CFR 214.2(l)(ii)(1)(D)** and, with respect to professionals, at **8 CFR 214.2(l)(ii)(1)(E)** . The change does not apply to other (i.e., managers and executives) L nonimmigrants.

Second, the worker must be stationed primarily at a worksite outside the L organization. Thus, so long as the worker is to be stationed and actually employed within the L organization, this particular ground of ineligibility does not apply. Moreover, even if the worker is stationed outside the L organization, the worker must be “stationed primarily” outside the organization. We interpret this provision to mean that, as a threshold matter, in order for the section **214(c)(2)(F)** bar to L classification to apply, a majority of the alien’s work-related activities must occur at a location other than that of the petitioner or its affiliates. In this regard, even if the majority of an alien’s time is physically spent at the petitioner or its affiliates’ location, to the extent that such time can be considered to be “down time” rather than time actually

performing the services described in the petition, an alien might be subject to the section 214(c)(2)(F) bar (since, in this example, the majority of the alien's actual work time is spent at an unaffiliated company or companies' work site). The number of non-affiliated worksite locations where the alien might be stationed, by itself, is not relevant; what is relevant is the location where the alien will be actually be engaged in employment as specified in the underlying petition.

If the alien worker is "stationed primarily" outside the L organization, as described above, then there are two independent means by which the alien worker may be rendered ineligible for L status.

The first means relates to the control and supervision of the worker. Even if the alien worker is to be stationed "primarily" outside the L organization, that fact alone does not establish ineligibility for L classification. In order for the ground of ineligibility to apply, "control and supervision" of the worker at the non-affiliated worksite must be "principally" by the unaffiliated employer. Again, adjudicators should use the common dictionary meaning of the term "principally," which means "first and foremost." Thus, even if the non-affiliated entity exercises some control or supervision over the work performed, as long as such control and supervision lies first and foremost within the L organization, and the L organization retains ultimate authority over the worker, the ground of ineligibility does not apply. For example, an L-1 worker may be stationed primarily outside the L organization, but receives all direction and instruction from a supervisor within the L organization structure. The non-L or ganization client may provide input, feedback, or guidance as to the client's needs, goals, etc., but does not control the work in the sense of directing tasks and activities. So long as the ultimate authority over the L-1 worker's daily duties remains within the L organization, the fact that there may be some intervening third party supervision or input between the worker and the L organization does not render the worker ineligible for L-1B classification.

The second means relates to the nature of the alien worker's placement outside the L organization. Such an alien worker is ineligible for L classification if the placement at the unaffiliated worksite 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. What constitutes "essentially" such an arrangement is in herently a fact question, and adjudicators therefore must look at the all aspects of the activity or activities in which the alien will be engaged away from the petitioner's worksite. In general, if the off-site activity or activities do not require specialized knowledge of the petitioner's product or services, or if such knowledge is only tangentially related to the performance of such off-site activities, the alien will fall within the ambit of the section **214(c)(2)(F)** bar. For example, an alien would be ineligible for L classification if a petitioner is essentially in the business of placing workers with various unaffiliated companies, irrespective of the alien's specialized knowledge of the petitioner's particular product or service, where the off-site activities to be performed do not require such specialized knowledge. On the other hand, if the petitioner is primarily engaged in providing a specialized service, and typically sends its specialized knowledge personnell on projects located on the work site of its unaffiliated clients to perform such services, then, assuming the alien remains under the principal control and supervision of the petitioning employer, and otherwise meets the basic requirements for L classification, the alien would not be subject to the section 214(c)(2)(F) bar.

(d) Petitioner's Status .

The petitioner for an intracompany transferee must be a qualifying organization which is seeking to transfer a foreign employee to the United States temporarily from one of its operations outside the United States. Either the United States employer or the foreign employer may file a petition with USCIS to classify the alien as an intracompany transferee. The petitioner must be actively engaged in providing goods and/or services in the United States and abroad, either directly or through a parent, branch, subsidiary, or affiliate, with employees in both countries, for the duration of the alien's stay. The mere presence of an agent or office of the petitioner is insufficient evidence of this requirement. In situations where the petitioner has submitted documentation of a qualifying relationship through possession of proxy votes, the petitioner must show that the proxy votes are irrevocable from the time of filing through the time of adjudication. Further, any approval is conditioned on evidence demonstrating that the qualifying relationship will continue to exist during the approval period requested. Any changes of ownership and control of the organization post-adjudication require the petitioner to file an amended petition, as such changes may constitute a substantial change in circumstances or represent new material information.

Depending on the nature of the petitioner, different types of evidence may be required:

- Large, Established Organizations . Such organizations may submit a statement by the company's president, corporate attorney, corporate secretary, or other authorized official describing the ownership and control of each qualifying organization, accompanied by other evidence such as a copy of its most recent annual report, Securities and Exchange Commission filings, or other documentation which lists the parent and its subsidiaries.

- Small Business and Marginal Operations . In addition to a statement of an authorized official regarding ownership and control of each qualifying organization, other evidence of ownership and control should be submitted, such as records of stock ownership, profit and loss statements or other accountant's reports, tax returns, or articles of incorporation, by-laws, and minutes of board meetings.

- New Offices . If the beneficiary is coming to the United States to open a new office, proof of ownership and control, in addition to financial viability, is required. The petitioners' statement of ownership and control should be accompanied by appropriate evidence such as evidence of capitalization of the company or evidence of financial resources committed by the foreign company, articles of incorporation, by-laws, and minutes of board of directors' meetings, corporate bank statements, profit and loss statements or other accountant's reports, or tax returns. See documentary requirements for new office cases in **8 CFR 214.2(l)(3)(v)** and discussion in **Matter of Leblanc, 13 I&N Dec. 816** .

Note

If the petition is approved under this provision, its validity is limited to one year, after which a new petition must be filed for extension of stay (see **8 CFR 214.2(l)(7)(i)(A)(3)**).

· Partnerships . To establish who owns and controls a partnership, a copy of the partnership agreement must be submitted. To establish what the partnership owns and controls, other evidence may be necessary. By law, international partnerships which provide accounting services or management consulting services meet the criteria as qualifying organizations for L-1 purposes. Extensive documentation in such cases is not required.

· Proprietorships . In cases where the business is not a separate legal entity from the owner(s), the petitioner's statement of ownership and control must be accompanied by evidence, such as a license to do business, record of registration as an employer with the Internal Revenue Service, business tax returns, or other evidence which identifies the owner(s) of the businesses.

· Joint Ventures . As discussed in **Matter of Hughes, 18 I&N Dec. 289** (Commissioner, 1982), there are two types of joint venture business enterprises - equity joint ventures and non-equity joint ventures:

- An equity joint venture is created under corporate law and exists when two or more companies contribute capital to the venture. A qualifying L-1 relationship can exist between a contributing company and the resulting venture if the contributing company owns at least 50% of the venture and exercises control over the venture.

- A non-equity joint venture, on the other hand, is a contractual arrangement in which one or more of the contributing companies provides noncapital resources (e.g., manufacturing processes, patents, trademarks, managerial know-how, or other essential factors). A non-equity joint venture does NOT establish a qualifying L-1 relationship.

(e) Alien's Qualifications .

Detailed descriptions of the alien's prior year of employment abroad and of the intended employment in

the United States are required from the petitioner to determine if the alien was and will be employed in a managerial, executive, or specialized knowledge capacity.

To document the alien's employment abroad and the alien's intended employment in the United States, a letter signed by an authorized official of the petitioner describing the prospective employee's employment abroad for the requisite one year and the intended employment in the United States, including the dates of employment, job titles, specific job duties, number and types of employees supervised, qualifications for the job, level of authority, salary, and dates of time spent in the United States during the qualifying period. In cases where the accuracy of the statement is in question, the director may require other evidence, such as wage and earning statements or an employment letter from an authorized official of the employing company abroad.

(f) Investigations.

The adjudicator may not request an overseas investigation of the qualifications of a beneficiary of an L-1 petition if there are other grounds for denial of the petition. Any request for an overseas investigation must be accompanied by copies of the Form I-129 and supporting documents. (See **Chapter 10.5** regarding overseas investigations requests.) Attach any report of investigation of the beneficiary's qualifications to the approved petition when it is forwarded to the consulate at which the visa application is to be made. Attach any report of investigation on the petitioner to the approved petition being forwarded to the consulate only if it might have a bearing on the visa issuance.

There is a high incidence of misrepresentation involving work experience gained in certain countries (see Appendix 30-2). Even so, when the adjudicating officer is convinced that the evidence substantiates the work experience for an L-1 nonimmigrant, the petition may be approved. The officer shall send all other L-1 nonimmigrant petitions for these countries for investigation.

All cases meeting the minimum threshold for articulable fraud must be referred to the Fraud Detection Unit (FDU) Intelligence Research Specialist (IRS) or FDNS Immigration Officer (IO) on the standard Fraud Referral Sheet (FRS) per the instructions in the December 14, 2004 memorandum entitled *Criteria for Referring Benefit Fraud Cases*. Field offices will, without exception, submit requests for overseas investigations to the FDU IRS/FDNS IO via the FRS. The FDU IRS/FDNS IO will track all case leads in the Fraud Tracking System (FTS) and will report all findings of fraud to Adjudications using the standard Fraud Verification Memorandum.

(g) Approval.

If the necessary supporting documents are present and the petition appears to be approvable in all respects, endorse the action block with the approval stamp. Indicate the petition validity dates and other action taken. The initial approval period is up to three years, except that if the petitioner is a start-up operation, the approval period is limited to one year. Extensions of stay are granted in two-year increments. The dates of employment (admission and extension periods) must be within the statutory limits for the L category: seven years for executive and managerial employment, five for specialized knowledge. Consider any concurrent extension or change of status request in accordance with the procedures described in Chapter 30. Closing actions include preparation of the approval notice (CLAIMS-generated), forwarding of the approved petition to the appropriate consulate (if applicable) and disposition of the file in accordance with local procedures. See **8 CFR 214.2(l)(14)(ii)** for special requirements involving extension requests for “new office” cases.

(1) Intermittent L-1 Status.

The limitations on the maximum stay in L status do not apply to aliens whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for an exception.

(2) Conversion from Specialized Knowledge to Executive / Manager Position.

An L-1B specialized knowledge alien may change to an L-1A executive/manager to receive the benefits of the seven year limit of stay. The petitioner must have a Form I-129 petition approved in the alien's behalf as an executive or manager for six months to be able to receive the limitation of stay of seven years. This means that a specialized knowledge alien must have an I-129 approved as an executive or manager prior to his four and one half year period of stay in the United States. Remember that the work experience outside the U.S. does not have to be in the same capacity as the proposed employment in the U.S.

(h) Denial.

Prepare and serve a formal denial order as described in **Chapter 10.7**. Forward the petition in accordance

with local procedures pending submission of an appeal or expiration of the appeal period. A denied petition for L classification is appealable to the Administrative Appeals Office.

(1) Discretionary Denial .

Regulations do not provide appellate review of an alien's application for extension of stay. A decision to grant or deny the application is discretionary. Due process does not require USCIS to provide appellate review of the discretionary denial of an application for a benefit conferred on a nonimmigrant. When novel or unusually complex issues are presented, the application should receive supervisory-level review. An alien who believes that his or her application has been arbitrarily or erroneously denied may file a motion to reopen or reconsider the case, request certification, or seek judicial relief. A denial of the extension of stay application requires no determination of whether the beneficiary meets L-1 standards; therefore, there is no decision on the petition to appeal. However, the petitioner is not precluded from filing a new petition in the alien's behalf.

(2) Readjudication of L-1 Eligibility .

In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that an alien is eligible for the particular nonimmigrant classification sought should be given deference. Cases where a prior approval of the petition need not be given deference are where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is a new material information that adversely impacts the petitioner's or beneficiary's eligibility. For additional guidance on this issue refer to **the William R. Yates memo of April 23, 2004 titled "The Significance of a Prior CIS approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity"** .

The following are some exceptions to the above guidance on adjudication of L-1 eligibility:

· Anti Job-Shop Provisions . The L-1 Visa Reform Act, at section 412(a) of Pub. L. 108-447, Division J, Title IV, adds a new section 214(c)(2)(F) to the Immigration and Nationality Act, as amended (Act). New section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be "stationed primarily" at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either (1) the alien will be "principally" under the "control and supervision" of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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 . The new ground of ineligibility applies to all petitions filed on or after June 6, 2005. This includes petitions for initial, amended, or extended L classification. Thus, even if an alien worker holds or held L specialized knowledge status prior to June 6, 2005 and USCIS previously determined that the alien worker was eligible, the test for the new ground of ineligibility is to be applied to the petition. Adjudicators should not make a special effort to seek out these prior approvals, but should assess these anti-job shop concerns as new or subsequent petitions arise for adjudication in the normal course of business.

· Treaty investor classification and L-1 “new office” extensions . Additional scrutiny should be given to petitions where the initial petition is granted to allow the petitioner and or/beneficiary to effectuate a tentative or prospective business plan or otherwise prospectively satisfy the requirements for the nonimmigrant classification. This includes treaty investor classification which may require a petitioner to be actively in the process of investing a substantial amount of capital in a bona fide enterprise, and the L-1 “new office” extension petitions. See **8 CFR 214.2(l)(14)(ii)** for special requirements involving extension requests for “new office” cases.

32.4 Blanket Petition Process

(a) General. (Chapter 32.4(a) Amended to add Note 2 10/6/2010; AD10-48; PM-602-0009. Revised [07/28/05]; AFM 05-26)

The blanket petition program allows a petitioner to seek continuing approval of itself, its parent, and its branches, subsidiaries, and affiliates as qualifying organizations and, later, classification under section **101(a)(15)(L)** of any number of aliens employed by itself, its parent, or some of its branches, subsidiaries, and affiliates. The program is restricted to relatively large international employers who are engaged in commercial trade or services. The petitioner is required to document that it meets certain criteria to file a blanket petition and to document the relationship between the qualifying organizations which will be included in the blanket petition. When the blanket petition is adjudicated, the decision relates only to these factors. Whether alien beneficiaries of the blanket petition qualify for L classification is later determined by a consular office when the alien applies for a visa or by a USCIS or CBP officer if the alien is visa-exempt or applying for a change of status. An alien, who for one year in the previous 3 years has been employed by a qualifying organization as a manager, executive, or specialized knowledge professional, is eligible to transfer to the United States to a qualifying organization listed in the blanket petition as a manager, executive, or specialized knowledge professional.

Note 1:

[Revised June 30, 2006] The L-1 Visa Reform Act at **section 413** of Pub. L. 108-447, Division J, Title IV, modifies the eligibility requirements for L-1 intracompany transferees covered by a blanket petition filed pursuant to section **214(c)(2)(A)** of the Act by amending section 214(c)(2)(A) of the Act to restore prior law requiring that the L-1 beneficiary of a blanket petition have been employed abroad by the L entity for a period of 12 months. Effective June 6, 2005, the Act eliminates the 6-month exception that had been the law for blanket beneficiaries since 2001. The restored one-year previous employment requirement applies only to an alien who is seeking initial classification as an L-1 nonimmigrant on the basis of a blanket petition filed with USCIS irrespective of when the blanket petition was filed. An alien who was classified as an L-1 nonimmigrant prior to June 6, 2005 on the basis of the blanket petition would continue to be subject to six-month employment requirement. The six-month rule should also continue to be applied to cases involving extensions or changes of job duties within the L classification filed on or after the June 6, 2005 effective date, but in which the original status was obtained through a L-1 blanket process prior to the effective date based upon the then-existing eligibility requirements.

Note 2:

Although Public Law 111-230, enacted August 13, 2010, requires the payment of an additional fee in the case of certain L-1 petitions, that fee does not apply to the filing of a blanket L-1 petition. However, the additional fee may apply to certain I-129S petitions submitted to USCIS by visa-exempt aliens.

(b) Eligibility Requirements.

The petitioner must submit a statement signed by the company's president, corporate attorney, corporate secretary, or other authorized official describing the ownership and control of the organizations included in the blanket petition, accompanied by supporting evidence, such as the company's latest annual report, Securities and Exchange Commission filings, or another appropriate document which lists the company's parent and subsidiaries. The petitioner must also submit a written statement and appropriate evidence to document that it meets all four of the following criteria to file a blanket petition:

(1) All of the organizations listed in the blanket petition must be engaged in commercial trade or services. The petitioner's statement that the organizations provide goods and/or services for profit satisfies this requirement.

(2) The petitioner must identify in its written statement an office in the United States which has been doing business for a year or longer. The date that office was established should be indicated by the petitioner.

(3) Inclusion of three or more organizations in the blanket petition is adequate evidence that the petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates.

(4) The final criteria may be met by the petitioner documenting any one of three factors:

- That it has transferred ten L-1 managers, executives, or specialized knowledge professionals to the United States in the previous 12 months. The petitioner should submit copies of Form I-797 to show this.

- That its U.S. subsidiaries and affiliates have a combined annual sales of at least \$25 million. The petitioner's statement regarding the combined annual sales of its United States organizations may be accepted as evidence of the alternative criteria. A copy of the company's annual report may also provide this information.

- That the petition has a U.S. workforce of at least 1,000 employees. Likewise, the petitioner's statement regarding the size of its United States workforce may be accepted as evidence of the alternative criteria. A copy of the company's annual report may also provide this information.

(c) Approval.

If the petition is approvable, notify the petitioner by issuing a CLAIMS-generated Form I-797, indicating the validity period. An initial approval is valid for three years and an extension (of the petition) is valid indefinitely, until revoked.

Note:

The validity period in the case of a blanket petition is the period during which the alien beneficiary must apply for admission or be granted a change of status. So long as the petition is still valid on the date the otherwise eligible alien is admitted or granted change of status, he or she shall be given L-1 status for the full three years.

(d) Denial.

Prepare and serve a formal denial order. Forward the petition in accordance with local procedures pending submission of an appeal or expiration of the appeal period. A denied petition for L classification is appealable to the Administrative Appeals Office.

(e) Certificate of Eligibility.

Form I-129S, Certificate of Eligibility, is the form used exclusively for beneficiaries of blanket petitions. When a qualifying organization with an approved blanket petition seeks to transfer an L- eligible alien to the United States using its blanket approval, the qualifying organization completes this certificate of eligibility for the alien.

32.5 Individual Eligibility under Blanket Petitions

(a) General. (Chapter 32.5) Revised [07/28/05]; AFM 05-26)

The adjudication of individual eligibility for admission under a blanket approval is delegated to the consular officer where the alien applies for a visa. If visa-exempt, or when the alien is applying for a change of status, this adjudication is handled by the service center where the blanket was approved. The alien must provide the consular or USCIS officer the following documents to support eligibility for L classification:

- A letter from the prospective employee's employer abroad confirming his or her dates of employment, job duties, qualifications, and salary for at least the previous year.
- Records of educational training, degrees, and other pertinent evidence to document that the prospective employee is a specialized knowledge professional.
- An original and two copies of the I-129S (issued within the last six months) and the three copies of Form I-797, Notice of Approval of Blanket L Classification. (Only the original and a single copy of each is needed for applications filed with a service center.)

(b) Anti “Job-Shopping” provisions of the L-1 Visa Reform Act.

As noted in **Chapter 32.3(c)** and (h)(2) of the AFM, the L-1 Reform Act, at Pub. L. 108-447, section 412(a) of Division J, Title IV, adds a new section **214(c)(2)(F)** to the Immigration and Nationality Act, as amended (Act). New section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either (1) the alien will be “principally” under the “control and supervision” of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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.

Several conditions must be met in order for this ground of ineligibility to apply:

First, the alien worker must be a specialized knowledge worker. The term “specialized knowledge” should be familiar to adjudicators and is defined at **8 CFR 214.2(l)(1)(ii)(D)** and, with respect to professionals, at **8 CFR 214.2(l)(1)(ii)(E)**. The change does not apply to other (i.e., managers and executives) L nonimmigrants.

Second, the worker must be stationed primarily at a worksite outside the L organization. Thus, so long as the worker is to be stationed within the L organization, this particular ground of ineligibility does not apply. Moreover, even if the worker is stationed outside the L organization, the worker must be “stationed primarily” outside the organization. We interpret this provision to mean that, as a threshold matter, in order for the section **214(c)(2)(F)** bar to L classification to apply, a majority of the alien’s work-related activities must occur at a location other than that of the petitioner or its affiliates. In this regard, even if the majority of an alien’s time is physically spent at the petitioner or its affiliates’ location, to the extent that such time can be considered to be “down time” rather than time actually performing the services described in the petition, an alien might be subject to the section 214(c)(2)(F) bar (since, in this example, the majority of the alien’s actual work time is spent at an unaffiliated company or companies’ work site). The number of non-affiliated worksite locations where the alien might be stationed, by itself, is not relevant; what is relevant is the location where the alien will be actually be engaged in employment as specified in the underlying petition.

If the alien worker is “stationed primarily” outside the L organization, as described above, then there are two independent means by which the alien worker may be rendered ineligible for L status.

The first means relates to the control and supervision of the worker. Even if the alien worker is to be stationed “primarily” outside the L organization, that fact alone does not establish ineligibility for L classification. In order for the ground of ineligibility to apply, “control and supervision” of the worker at the non-affiliated worksite must be “principally” by the unaffiliated employer. Again, adjudicators should use the common dictionary meaning of the term “principally,” which means “first and foremost.” Thus, even if the non-affiliated entity exercises some control or supervision over the work performed, as long as such control and supervision lies first and foremost within the L organization, and the L organization retains ultimate authority over the worker, the ground of ineligibility does not apply. For example, an L-1 worker may be stationed primarily outside the L organization, but receives all direction and instruction from a supervisor within the L organization structure. The non-L organization client may provide input, feedback, or guidance as to the client’s needs, goals, etc., but does not control the work in the sense of directing tasks and activities. So long as the ultimate authority over the L-1 worker’s daily duties remains within the L organization, the fact that there may be intervening supervision or input between the worker and the L organization does not render the worker ineligible for L-1B classification.

The second means relates to the nature of the alien worker’s placement outside the L organization. Such an

alien worker is ineligible for L classification if the placement at the unaffiliated worksite 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. What constitutes “essentially” such an arrangement is inherently a fact question, and adjudicators therefore must look at the all aspects of the activity or activities in which the alien will be engaged away from the petitioner’s worksite. In general, if the off-site activity or activities do not require specialized knowledge of the petitioner’s product or services, or if such knowledge is only tangentially related to the performance of such off-site activities, the alien will fall within the ambit of the section 214(C)(2)(F) bar. For example, an alien would be ineligible for L classification if a petitioner is essentially in the business of placing workers with various unaffiliated companies, irrespective of the alien’s specialized knowledge of the petitioner’s particular product or service, where the off-site activities to be performed do not require such specialized knowledge. On the other hand, if the petitioner is primarily engaged in providing a specialized service, and typically sends its specialized knowledge personnel on projects located on the work site of its unaffiliated clients to perform such services, then, assuming the alien remains under the principal control and supervision of the petitioning employer, and otherwise meets the basic requirements for L classification, the alien would not be subject to the section 214(c)(2)(F) bar.

(c) Adjudication.

Adjudication is limited to beneficiary-related issues, e.g., the beneficiary’s qualifying experience and the nature of the proposed employment in the United States. If a question arises relating to the petitioner, the issue must be resolved through the revocation process, discussed in **Chapter 30.11**. Policies and procedures for individual L-petition adjudication are equally applicable to blanket cases.

(d) Approval.

Upon approval, endorse both copies of Form I-129S with the approval stamp and period of admission (up to three years, even if the blanket is due to expire sooner). Return the original to the applicant and retain a copy for USCIS records.

(e) Denial.

If an individual applicant appears ineligible, notify the petitioner of the decision using a formal written order. An appeal may be filed by the petitioner in the same manner as an appeal from the denial of an individual L petition. See **8 CFR 214.2(l)(10)**. If a consular officer denies such as case, no appeal is

permitted; however, the petitioner may file an individual L petition in such a case. See **8 CFR 214.2(l)(5)(ii)(E)** .

32.6 Technical Issues

(a) Legal Entities.

The United States and qualifying employer abroad must be legal entities. In the United States, a business is usually in the form of a corporation, partnership, or a proprietorship. When dealing with a smaller petitioning legal entity, evidence should be provided which establishes that there is a sufficient amount of employees to continue business operations in the foreign country, as well as continuing business operations in the United States once the beneficiary completes the temporary services and transfers abroad.

The regulations at **8 CFR 214.2(l)(1)(ii)** provide examples of the legal entities included under the L-1 classification. Evidence that the employer is a legal entity consists of evidence such as articles of incorporation, partnership agreement, license to do business, or evidence of registration with the Internal Revenue Service as an employer. In petitions involving well-known or publicly traded corporations, no such evidence should be required.

(b) Determining Whether a Qualifying Business Relationship Exists.

For purposes of L-1 classification, ownership and control are the factors for establishing a qualifying relationship between business entities.

- Ownership means the legal right of possession with full power and authority to control.
- Control means the right and authority to direct the management and operations of the business entity.

The petitioner is required to identify each of the qualifying organizations as one of the types of entities specifically described in 8 CFR 214.2(l)(1)(ii): parent, branch, subsidiary, or affiliate. The petitioner must document ownership and control of both legal entities to establish that a qualifying relationship exists as defined in the regulations.

Stock certificates alone may not be sufficient to establish that a qualifying relationship exists. Documents such as the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of

relevant annual shareholder meetings when appropriate, should also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. When appropriate, a petitioning company should be asked to provide all agreements relating to the voting of shares, the distribution of profit, the management and direction of the petitioning company, and any other factor affecting actual control of the entity. Without full disclosure of all relevant documents, USCIS may be unable to determine the elements of ownership and control. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Evidence of the acquisition of the actual ownership interest (i.e., capital investment, wire transfers, stock purchase agreements, etc.) may be required as additional supporting evidence. See 8 CFR 214.2(l)(3)(viii).

The most common types of business relationships which are not qualifying under the L category are those based on contractual, licensing, and franchise agreements. Additional non-qualifying relationships include arrangements such as less than 50-50 joint ventures and charter membership arrangements. See discussions of various qualifying and non-qualifying relationships in *Matter of Schick*, 13 I&N Dec. 647; *Matter of Del Mar Ben, Inc.*, 15 I&N Dec. 5; *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530; *Matter of Tessel, Inc.*, 17 I&N Dec. 631; *Matter of Barsai*, 18 I&N Dec. 13; *Matter of Hughes*, 18 I&N Dec. 289; *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362.

Companies that are publicly traded and regulated by the SEC may submit copies of annual reports, where probative, as evidence of their affiliates and subsidiaries. Most annual reports will list the company's foreign affiliates and subsidiaries, along with the company's ownership interest (controlling, not controlling, joint venture, etc.). The annual reports are frequently prepared by major accounting firms and include audited financial statements. Evidence may also include copies of SEC Forms 10K and 10Q. This will make L-1 processing easier for both USCIS and publicly-traded companies.

Where one or both of the qualifying entities has undergone or will undergo a corporate reorganization (e.g. merger, spin-off, acquisition, etc.), USCIS must determine whether the qualifying relationship between the entities will exist following the reorganization. USCIS should therefore review standard documents from the merger: the letter of intent, minutes from shareholder's meeting, the Hart-Scott-Rodino antitrust filings, as well as the ultimate contract. However, unless the company is publicly traded, there will likely be privacy concerns regarding proprietary information and finances.

(c) Doing Business.

An L-1 petitioning company must be "doing business" as defined in 8 CFR 214.2(l)(1)(ii)(H) in the United States and at least one other country for the duration on the L-1 beneficiary's stay in the United States. In start-up operations, the business in the United States may be prospective in nature. Ordinarily, the

viability of the U.S. employer may be demonstrated by the fact that the company has affiliate/subsidiary entities existing and operating under the laws of another country.

There may be instances where business is conducted through an agent rather than a separate legal entity. The mere presence of such an agent is insufficient to establish that the petitioner is doing business. The petitioner must establish that the entity conducts regular, systematic business (manufacturing, sales, services, etc.). A certified copy of the company's most recent IRS Form 1120, including all attachments and schedules may also be required. See discussion in *Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977). **Matter of Thompson**, 18 I&N Dec. 169 (Comm. 1981), which also discusses this issue, has been superseded by more recent regulations and should not be followed.

USCIS experience has revealed that a large number of suspect L-1 petitioners are operating as small import/export firms. If a company is doing business as an import/export firm, USCIS should require the firm to submit multiple examples of the customs forms that would be required in the normal course of business: Form 7525V (Shipper's Export Declaration), Form 7501 (Entry Summary), Form 301 (Customs Bond). The forms should include the importer's identification number. Other forms that would be required in the day-to-day business of an import-export firm would include invoices, shipping manifests, shipping insurance policies, bills of lading, letters of credit, wire transfer advisement, inspection certifications, sales contracts, and general business correspondence.

(d) Managerial or Executive Capacity.

The discussion of managerial and executive capacity that follows provides guidance for applying the definition of these terms to specific case situations:

An executive or managerial capacity requires a certain level of authority and an appropriate mix of job duties. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. Front-line supervisors, such as those who plan, schedule, and supervise the day-to-day work of nonprofessional employees, are not employed in an executive or managerial capacity, even though they may be referred to as managers in their particular organization. In addition, individuals who primarily perform the tasks necessary to produce the product(s) or provide the service(s) of an organization are not employed in an executive or managerial capacity. See *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988).

Eligibility requires that the duties of a position be primarily of an executive or managerial nature. The test is basic to ensure that a person not only has requisite authority, but that a majority of his or her duties relate

to operational or policy management, not to the supervision of nonprofessional employees, performance of the duties of another type of position, or other involvement in the operational activities of the company. This does not mean that the executive or manager cannot regularly apply his or her technical or professional expertise to a particular problem. Certain positions necessarily require a manager or executive's application of his technical or professional expertise; adjudicators should therefore focus on the primary duties of the beneficiary.

An executive or manager may manage or direct a function within an organization. It must be clearly demonstrated, however, that the function is not directly performed by the manager or executive. If the function itself is performed by the intended manager or executive, the position should be viewed as a staff officer or specialist, not as an executive/manager. In general, classification in a specialized knowledge capacity is more appropriate for individuals who perform the duties associated with a function, rather than managing other professional employees or directing the activities or policies of the function.

If a small or medium-sized business supports a position wherein the duties are primarily executive or managerial the position may qualify under the L category. However, neither the title of a position nor ownership of the business are, by themselves, indicators of managerial or executive capacity. For example, a physician may incorporate his or her practice for business purposes and may hire a receptionist, bookkeeper, and a nurse to assist in that medical practice. For L purposes, the physician is not a manager, but a person who primarily practices his or her professional skills as a physician.

The L beneficiary who is coming to the United States to open a new office may be classified as a manager or executive during the one year required to reach the "doing business" standard if the factors surrounding the establishment of the proposed organization are such that it can be expected that the organization will, within one year, support a managerial or executive position. The factors to be considered include amount of investment, intended personnel structure, product or service to be provided, physical premises, and viability of the foreign operation. It is expected that a manager or executive who is required to open a new business or office will be more actively involved in day-to-day operations during the initial phases of the business, but must also have authority and plans to hire staff and have wide latitude in making decisions about the goals and management of the organization.

(e) Specialized Knowledge Capacity.

In order to establish eligibility for approval, the L-1B petitioner must show: (1) that the beneficiary possesses "specialized knowledge"; (2) that the position offered involves the "specialized knowledge" held by the beneficiary; and (3) that the beneficiary has at least one continuous year of employment abroad in a managerial, executive, or specialized knowledge capacity with the petitioning employer and/or any qualifying organization (collectively referred to as the "petitioning organization") within the preceding three years. If the beneficiary will be located primarily at the workplace of an unaffiliated company, the

petitioner also must establish that the beneficiary is eligible for L-1B classification under the requirements of the L-1 Visa Reform Act.

(1) Definition of "specialized knowledge."

A petitioner can demonstrate "specialized knowledge" by establishing either one of two statutory criteria. Under the statute, a beneficiary is deemed to have specialized knowledge if he or she has: (1) a "special" knowledge of the company product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the company. INA 214(c)(2)(B). The corresponding regulation similarly defines specialized knowledge in terms of "special" or "advanced" knowledge:

[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.

8 CFR 214.2(l)(1)(ii)(D) (emphasis added).

Because the statute and regulations do not define the terms "special" or "advanced," we look to their common dictionary definitions, as well as the agency's practice and experience in this context. The term "special" is defined in leading dictionaries as "surpassing the usual," "distinct among others of a kind," "distinguished by some unusual quality," "uncommon," or "noteworthy."¹ The term "advanced" is defined in various dictionaries as "greatly developed beyond an initial stage," or "ahead or far or further along in progress, complexity, knowledge, skill, etc."² Applying these definitions to the statutory and regulatory text, a beneficiary seeking L-1B classification should, as a threshold matter, possess:

- **special knowledge**, which is knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets that is **distinct or uncommon in comparison to** that generally found in the particular industry; or
- **advanced knowledge**, which is knowledge of or expertise in the petitioning organization's specific processes and procedures that is not commonly found in the relevant industry and is **greatly developed or further along in progress, complexity and understanding** than that generally found within the employer.

The following section explains how to determine whether a beneficiary possesses special or advanced knowledge.

(2) Application of the "specialized knowledge" definition.

A beneficiary may possess either special or advanced knowledge, or both. Determining whether a beneficiary has "special knowledge" requires review of the beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests (hereinafter "products or services"). Determinations concerning "advanced knowledge," on the other hand, require review of the beneficiary's knowledge of the specific petitioning organization's processes and procedures. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout

the particular industry. As discussed in detail below, however, a beneficiary's knowledge need not be proprietary in nature or narrowly held within the petitioning organization to be considered specialized.

Determining whether knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. The petitioner bears the burden of establishing such a favorable comparison. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

Alternatively, because "advanced knowledge" concerns knowledge of a petitioning organization's processes and procedures that is not commonly found in the relevant industry, the petitioner may meet its burden through evidence that the beneficiary has knowledge of or expertise in the petitioning organization's processes and procedures that is greatly developed or further along in progress, complexity and understanding in comparison to other workers in the employer's operations. It is not sufficient to demonstrate that the beneficiary has general knowledge of processes and procedures common to the industry; the focus here is primarily on whether the beneficiary's knowledge of the processes and procedures used specifically by the petitioning organization is advanced. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others in the petitioning organization and the relevant industry.

The following is a *non-exhaustive* list of factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized:

- The beneficiary possesses knowledge of foreign operating conditions that is of significant value to the petitioning organization's U.S. operations.
- The beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the employer's productivity, competitiveness, image, or financial position.
- The beneficiary's claimed specialized knowledge normally can be gained only through prior experience with the petitioning organization.
- The beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual without significant economic cost or inconvenience (because, for example, such knowledge may require substantial training, work experience, or education).³
- The beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily unique to the petitioning organization.

- The beneficiary possesses knowledge that is particularly beneficial to the petitioning organization's competitiveness in the marketplace.

The presence of one or more of these (or similar) factors, when assessed in the totality of the circumstances, may be sufficient to establish by a preponderance of the evidence that a beneficiary has specialized knowledge. As noted above, this list of factors is meant to be illustrative, not exhaustive, and it does not impose particular requirements that a petitioner must demonstrate. Suggested evidence that petitioners may provide consistent with these factors is provided in section 32.6(e)(3).

(A) Specialized knowledge generally cannot be commonly held, lacking in complexity, or easily imparted to other individuals.

One of the several factors that may be considered in determining whether knowledge is specialized is the amount and type of training, work experience, or education required to develop that knowledge. See 8 CFR 214.2(l)(3)(iv) (requiring petitioner to submit evidence of the beneficiary's "prior education, training, and employment"). Knowledge generally may not be considered special or advanced if it is commonly held, lacks some complexity, or can be easily imparted from one person to another. On the other hand, knowledge generally may be considered specialized if a petitioner can demonstrate through credible and relevant evidence that the knowledge possessed by the beneficiary would be difficult to impart to another individual without significant economic cost or inconvenience to the petitioning organization.⁴

Depending on the totality of the circumstances, significant economic cost or inconvenience may be a relevant factor; however, a petitioner is not required to establish significant economic cost or inconvenience if it can otherwise establish specialized knowledge.

(B) Specialized knowledge need not be proprietary or unique to the petitioning organization.

Although specialized knowledge ordinarily cannot be knowledge that is generally possessed or easily transferrable, it need not be proprietary or unique to the petitioning organization. A petitioner is not required to demonstrate that it is the only company where the beneficiary could have acquired the knowledge, or that it is the only company that trades in the technologies, techniques, products, services, or processes that are the subject of the beneficiary's knowledge. Although a petitioner may provide evidence that knowledge is proprietary or unique in support of its claim that the knowledge is also special or advanced, and thus specialized, the L-1B classification does not require such a finding.

(C) L-1B classification does not involve a test of the U.S. labor market.

As noted above, the petitioner must ordinarily demonstrate that the beneficiary's knowledge is not generally or commonly held in the relevant industry. Such a determination, however, does not involve a test of the U.S. labor market. A petitioner is not required to demonstrate the lack of readily available workers to perform the relevant duties in the United States.⁵ The relevant inquiry is not whether workers with the beneficiary's knowledge are available to the employer; rather, it is whether there are so many such workers that the knowledge is generally or commonly held in the relevant industry, and therefore not specialized. If there are numerous workers in the United States who possess knowledge that is generally

similar to the beneficiary's, it is the petitioner's burden to establish that the beneficiary's knowledge nevertheless is truly specialized.⁶

(D) Specialized knowledge need not be narrowly held within the petitioning organization.

Although comparisons with other employees of the petitioning organization may be useful in determining whether the beneficiary's knowledge is "special" or "advanced," such knowledge need not be narrowly held within the petitioning organization. Multiple employees within a company may have obtained the experience, training, or education necessary to possess the same type of specialized knowledge. Some companies may use technologies or techniques that are so advanced or complex that nearly all employees working on the relevant products or services possess specialized knowledge. The mere existence of other employees with similar knowledge should not, in and of itself, be a ground for denial.

Depending on the facts of the case, where there are already a significant number of employees in the U.S. organization with the same claimed specialized knowledge as that of the beneficiary, a question may arise as to whether the relevant position needs to be filled by an individual having specialized knowledge. Accordingly, officers should consider, as in other L-1B cases, whether the evidence of record demonstrates the organization's need to transfer the beneficiary to the United States. The officer may consider, for example, whether the petitioner has shown the need for another individual with similar knowledge in the organization's U.S. operations and the difficulty in transferring or teaching the relevant knowledge to an individual other than the beneficiary. In reviewing the record, the officer should also consider how the duties to be performed by the beneficiary that require his or her claimed specialized knowledge may or may not differ from those already employed in the organization's U.S. operations; the extent to which the petitioning organization would suffer economic inconvenience or disruption to its U.S. or foreign-based operations if it were unable to transfer the beneficiary; whether and to what degree the beneficiary's claimed specialized knowledge would be beneficial to the successful conduct of the employer's operations; and whether the total compensation⁷ provided to the beneficiary is comparable in dollar value to similarly situated peers in such U.S. operations.⁸

(E) Specialized knowledge workers need not occupy managerial or similar positions or command higher compensation compared to their peers.

Unlike the L-1A nonimmigrant classification, the L-1B classification does not require that the beneficiary be a manager or executive. Nor does the classification require that the beneficiary be an officer or supervisor, or hold any other similar position within the petitioning organization. Although rank and compensation are factors that may be considered when analyzing whether a beneficiary possesses specialized knowledge, there is no requirement that the beneficiary be of a certain rank within the organization or that the beneficiary's compensation be "elevated" compared to his or her peers within the organization or the particular industry. There may be valid business reasons that one employee may be earning more or less than his or her peers. A company in its early development, for example, may not yet have generated sufficient income to pay the beneficiary a greater salary. In creating the L-1B classification, Congress focused on the beneficiary's "knowledge," not his or her position on a company's organizational chart or pay scale.

(F) Eligibility for another nonimmigrant classification is not a bar to eligibility for L-1B classification. The requirements for L-1B classification are distinct from other visa classifications. Eligibility for one

classification does not preclude eligibility for another. A beneficiary may possess characteristics that make him or her potentially qualified for two or more distinct nonimmigrant classifications. For example, the beneficiary may have characteristics that make him or her eligible as an L-1B specialized knowledge worker and an H-1B "specialty occupation" worker. Similarly, a beneficiary may qualify for L-1B nonimmigrant status while at the same time possessing the extraordinary ability or achievement necessary for O-1 status. Possession of such dual qualifications does not render the beneficiary ineligible for either classification. Officers should only consider the requirements for the classification sought in the petition, without considering eligibility requirements for other classifications.

(3) Evaluating claims of specialized knowledge.

USCIS will be able to perform its adjudicatory function most effectively when the petitioner explains in detail the specific nature of the industry or field involved, the nature of the petitioning organization's products or services, the nature of the specialized knowledge required to perform the beneficiary's duties, and the need for the beneficiary's specialized knowledge. To show that the offered position in the United States involves specialized knowledge, the petitioner must submit "a detailed description of the services to be performed." 8 CFR 214.2(l)(3)(ii). A petitioner's statement may be persuasive evidence if it is detailed, specific, and credible. Adjudicators may, in appropriate cases, however, request further evidence to support a petitioner's statement, bearing in mind that there may be cases involving circumstances that may be difficult to document other than through a petitioner's own statement.⁹ The petitioner must also submit evidence that the beneficiary's "prior education, training, and employment qualifies him/her to perform the intended services in the United States." 8 CFR 214.2(l)(3)(iv). While the petitioner is required in all cases to compare the beneficiary's knowledge to that of others, the petitioner may also be able to demonstrate the nature of the claimed specialized knowledge by, among other things, indicating how and when the beneficiary gained such knowledge or explaining the difficulty of imparting such knowledge to others without significant cost or disruption to its business.

Other evidence that a petitioner may submit to demonstrate that an individual's knowledge is special or advanced, includes, but is not limited to:

- Documentation of training, work experience, or education establishing the number of years the individual has been using or developing the claimed specialized knowledge as an employee of the petitioning organization or in the industry;
- Evidence of the impact, if any, the transfer of the individual would have on the petitioning organization's U.S. operations;
- Evidence that the alien is qualified to contribute significantly to the U.S. operation's knowledge of foreign operating conditions as a result of knowledge not generally found in the petitioning organization's U.S. operations;

- Contracts, statements of work, or other documentation that shows that the beneficiary possesses knowledge that is particularly beneficial to the petitioning organization's competitiveness in the marketplace;
- Evidence, such as correspondence or reports, establishing that the beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the petitioning organization's productivity, competitiveness, image, or financial position;
- Personnel or in-house training records that establish that the beneficiary's claimed specialized knowledge normally can be gained only through prior experience or training with the petitioning organization;
- Curricula and training manuals for internal training courses, financial documents, or other evidence that may demonstrate that the beneficiary possesses knowledge of a product or process that cannot be transferred or taught to another individual without significant economic cost or inconvenience;
- Evidence of patents, trademarks, licenses, or contracts awarded to the petitioning organization based on the beneficiary's work, or similar evidence that the beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily proprietary or unique to the petitioning organization; and
- Payroll documents, federal or state wage statements, documentation of other forms of compensation, resumes, organizational charts, or similar evidence documenting the positions held and the compensation provided to the beneficiary and parallel employees in the petitioning organization.

A petitioner may submit any other evidence it chooses. In all cases, USCIS will review the entire record to determine whether the petitioner has established by a preponderance of the evidence that the beneficiary has specialized knowledge under the totality of the circumstances, in accordance with the standards set forth in the relevant statutes and regulations. Merely stating that a beneficiary's knowledge is somehow different from others or greatly developed does not, in and of itself, establish that he or she possesses specialized knowledge. Ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge.

There are multiple examples outlined in the March 1994 memo. A common specialized knowledge theme is that the knowledge the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm. The knowledge is also not generally known and is of some complexity. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's specialized

knowledge is distinguished by some unusual qualification and not generally known by practitioners in the alien's industry. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge must be supported by evidence describing and setting apart the knowledge from elementary knowledge possessed by others.

(f) Extent of Employment .

It must be established that the alien will be rendering services to and employed by the entity inside the United States. The alien does not have to be employed by the U.S. employer on a full-time basis, but a significant portion of the alien's employment in the United States must involve managerial, executive, or specialized knowledge activities. Generally, activities such as conferring with officials, attending meetings and conferences, and participating in training are not considered productive employment and are appropriate for B-1 classification. Salary and source of remuneration are not issues relevant to L-1 petition adjudication. See *Matter of Pozzoli* , 14 I&N Dec. 569.

(g) Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission of L-1 Nonimmigrants . (Revised 10-20-2005; AFM AD05-21)

USCIS officers shall comply with the following guidance to determine whether periods of time spent outside the United States by an L-1 nonimmigrant worker in a specialized knowledge or a managerial or executive capacity will be recaptured:

(1) Periods of Time Outside the United States that May Be Recaptured for an L-1 Nonimmigrant Worker in a specialized knowledge or a managerial or executive capacity .

Because section **214(c)(2)(D)** of the Act states that “the period of authorized admission for” an L-1 nonimmigrant admitted to render services in a managerial or executive capacity shall not exceed 7 years, or an L-1 nonimmigrant admitted to render services in a capacity that involves specialized knowledge shall not exceed 5 years, and because “admission” is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer” only time spent in the United States as an L-1 counts towards the maximum. Thus, upon requesting an extension, the L-1 nonimmigrant can request that full days spent outside the U.S. during the period of petition validity be recaptured and added back to his or her total maximum period of stay. As always, it is the applicant/petitioner’s burden to demonstrate eligibility, and appropriate evidence, such as copies of passport stamps, I-94’s and/or plane tickets must be submitted.

The applicant for extension seeking to recapture time spent outside the U.S. need not demonstrate that the time spent outside the U.S. was meaningfully interruptive of his or her L-1 stay. The reason for the absence is not relevant to the question of whether the time may be recaptured. Any trip of at least one 24-hour day outside the U.S. for any purpose, personal or business, can be recaptured. The applicant for extension must only demonstrate to the satisfaction of the adjudicator that he or she was outside the U.S. for the amount of time for which recapture is requested. Matter of IT Ascent, EAC# 0404753189, was designated as binding policy guidance on October 18, 2005. While that decision only deals with H-1B extensions, Officers should refer to this decision as illustrative of the rationale for allowing recapture of any time spent outside the United States by L-1 nonimmigrants.

(2) Evidence.

The burden of proof remains with the L-1 petitioner and/or the L-1 beneficiary to submit evidence documenting any and all exact periods of physical presence outside the United States when seeking eligibility for an extension of petition validity and extension of stay as an L-1 nonimmigrant. The petitioner and/or beneficiary are clearly in the best position to organize and submit evidence of the beneficiary's departures from and reentry into the United States. While petitioners often submit a summary and/or charts of travel and the number or days spent out of the United States, which eases review of the accompanying documentation, petitioners are also required to submit independent documentary evidence establishing that the alien was outside of the United States during all the days, weeks, months etc. that he or she seeks to recapture (e.g. photocopies of passport stamps and/or Form I-94 arrival-departure records).

The fact that the burden may not be met for some claimed periods, or has been met for some claimed periods, has no bearing on the remaining claimed periods. Any periods of time for which the burden has been met may be added to the eligible period of admission upon approval of the application for extension of status. An alien may not be granted an extension of stay for periods of time that are not supported by independent documentary evidence. A Request for Evidence should not be sent to the petitioner for any claimed periods unsupported by evidence.

In some instances, the alien may not be granted the entire period of time requested because the evidence submitted does not establish eligibility for the entire period of stay requested. In those situations, the approval notice should be issued for the period of time for which eligibility has been demonstrated.

The status of an L-2 dependent of an L-1 nonimmigrant is subject to the same period of admission and limitations as the principal alien. For example, if an L-1 alien is able to recapture a two-week business trip

abroad for each year for five years in a row (for a total of 10 weeks), then his or her L-2 dependents, if seeking extension of stay, should be given an extension of stay up to the new expiration of the L-1 alien's stay. The statute and regulations allow L-2 status only "if [the dependents] are accompanying or following to join the beneficiary in the United States." If it appears that the dependent is not using or is not intending to use L-2 status primarily to accompany or follow to join the principal L-1 alien, such as a situation in which the principal only is physically present or intends to be physically present in the United States for a small proportion of his or her period of L-1 admission and the dependents are using L-2 status to evade the limitations on or eligibility rules of the nonimmigrant options that otherwise would be available, then the L-2 extension of stay may be denied, limited or revoked on notice giving the L-2 the opportunity to provide evidence of the intention primarily to accompany the principal.

Officers involved in the adjudication of L-1 petitions are cautioned that the examples provided in this memorandum are not all inclusive. Situations may develop in the adjudication of certain petitions, which will require the adjudicating office to use discretion. Therefore, decisions on petitions for extension concerning this issue that contain unique or novel circumstances may be certified to the Administrative Appeals Office for review.

(h) Decoupling Time Spent in L-2 Status from L-1 Maximum Period of Stay [Chapter 32.6(h) added 12-05-2006] .

(1) Time spent in L-2 status does not count against the five or seven-year maximum period of admission applicable to L-1A and L-1B aliens respectively. An alien who holds L-2 status (or who previously held L-2 status) and subsequently seeks to obtain L-1A or L-1B status is eligible for a maximum period of stay of five or seven years in L-1A or L-1B status respectively.

(2) In the context of any applications for change of status from L-2 to L-1A or L-1B, adjudicators should consider whether the L-2 alien complied with the requirements of accompanying or joining the L-1A or L-1B alien, and whether the alien otherwise maintained valid nonimmigrant status.

(3) USCIS may limit, deny or revoke on notice any stay for an L-2 dependent that is not primarily intended for the purpose of being with the principal worker in the United States, and a spouse or child may be required to show that his requested stay is not intended to evade the normal requirements of the nonimmigrant classification that otherwise would apply when the principal alien is absent from the United States.

USCIS (as well as port inspectors and consular officers) may adjudicate applications for dependent stays in

order to prevent an L-1 alien from using only occasional work visits to the United States in order to “park” the family members in the United States for extended periods while the principal alien is normally absent.

Appendix 32-1 Interpretation of Specialized Knowledge.

Editor's Note: The following is the text of a memorandum issued March 9, 1994, to all offices by the Acting Executive Associate Commissioner for Programs:

The Immigration Act of 1990 contains a definition of the term "specialized knowledge" which is different in many respects than the prior regulatory definition. The purpose of this memorandum is to provide field offices with guidance on the proper interpretation of the new statutory definition.

The prior regulatory definition required that the beneficiary possess an advanced level of expertise and proprietary knowledge not available in the United States labor market. The current definition of specialized knowledge contains two separate criteria and, obviously, involves a lesser, but still high, standard. The statute states that the alien has specialized knowledge if he/she has special knowledge of the company product and its application in international markets or has an advanced level of knowledge of the processes and procedures of the company.

Since the statutory definitions and legislative history do not provide any further guidelines or insight as to the interpretation of the terms "advanced" or "special", officers should utilize the common dictionary definitions of the two terms as provided below.

Webster's II New Riverside University Dictionary defines the term "special" as "surpassing the usual; distinct among others of a kind." Also, Webster's Third New International Dictionary defines the term "special" as "distinguished by some unusual quality; uncommon; noteworthy."

Based on the above definition, an alien would possess specialized knowledge if it was shown that the knowledge is different from that generally found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

The following are provided as general examples of situations where an alien possesses specialized knowledge.

- The foreign company manufactures a product which no other firm manufactures. The alien is familiar with the various procedures involved in the manufacture, use, or service of the product.
- The foreign company manufactures a product which is significantly different from other products in the industry. Although there may be similarities between products, the knowledge required to sell, manufacture, or service the product is different from the other products to the extent that the United States or foreign firm would experience a significance interruption of business in order to train a new worker to assume those duties.
- The alien beneficiary has knowledge of a foreign firm's business procedures or methods of operation to the extent that the United States firm would experience a significant interruption of business in order to train a United States worker to assume those duties.

A specific example of a situation involving specialized knowledge would be if a foreign firm in the business of purchasing used automobiles for the purpose of repairing and reselling them, some for export to the United States, petitions for an alien to come to the United States as a staff officer. The beneficiary has knowledge of the firm's operational procedures, e.g., knowledge of the expenses the firm would entail in order to repair the car as well in selling the car. The beneficiary has knowledge of the firm's cost structure for various activities which serves as a basis for determining the proper price to be paid for the vehicle. The beneficiary also has knowledge of various United States customs laws and EPA regulations in order to determine what modifications must be made to import the vehicles into the United States. In this case it can be concluded that the alien has advanced knowledge of the firm's procedures because a substantial amount of time would be required for the foreign or United States employer to teach another employee the firm's procedures. Although it can be argued that a good portion of what the beneficiary knows is general knowledge, i.e. customs and EPA regulations, the combination of the procedures which the beneficiary has knowledge of renders him essential to the firm. Specifically, the firm would have a difficult time in training another employee to assume these duties because of the inter-relationship of the beneficiary's general knowledge with the firm's method of doing business. The beneficiary therefore possesses specialized knowledge.

Further, Webster's II New Riverside University Dictionary defines the term "advanced" as "highly developed or complex; at a higher level than others." Also, Webster's Third New International Dictionary defines the term "advanced" as "beyond the elementary or introductory; greatly developed beyond the initial stage."

Again, based on the above definition, the alien's knowledge need not be proprietary or unique, merely

advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout the company, only that the knowledge be advanced.

The determination of whether an alien possesses specialized knowledge does not involve a test of the United States labor market. Whether or not there are United States workers available to perform the duties in the United States is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the alien, not whether there are similarly employed United States workers. However, officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. There is no requirement in current legislation that the alien's knowledge be unique, proprietary, or not commonly found in the United States labor market.

The following are some of the possible characteristics of an alien who possesses specialized knowledge. They are not all inclusive. The alien:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;
- Is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
- Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position;
- Possesses knowledge which, normally, can be gained only through prior experience with that employer;
- Possesses knowledge of a product or process, which cannot be easily transferred or taught to another individual.
- An alien beneficiary has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.

A specific example of the above is if a firm involved in processing certain shellfish desires to petition for a beneficiary to work in the United States in order to catch and process the shellfish. The beneficiary learned the process from his employment from an unrelated firm but has been utilizing that knowledge for the foreign firm for the past year. However, the knowledge required to process the shellfish is unknown in the United States. In this instance, the beneficiary possesses specialized knowledge since his knowledge of processing the shellfish must be considered advanced.

The common theme, which runs through these examples is that the knowledge which the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm. The knowledge is not generally known and is of some complexity.

The above examples and scenarios are presented as general guidelines for officers involved in the adjudication of petitions involving specialized knowledge. The examples are not all inclusive and there are many other examples of aliens who possess specialized knowledge, which are not covered in this memorandum.

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.

In closing, this memorandum is designed solely as a guide. It must be noted that specialized knowledge can apply to any industry, including service and manufacturing firms, and can involve any type of position.