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U.S. Citizenship  
and Immigration  
Services

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D-7

File: WAC 07 227 53665 Office: CALIFORNIA SERVICE CENTER Date: OCT 21 2008

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in software development and services. The petitioner claims to be the parent company of Infogain India Pvt. Ltd., located in India. The petitioner has employed the beneficiary as a software engineer since September 2004 and now seeks to extend his L-1B status for two additional years.

The director denied the petition on two separate grounds. Citing to the anti "job shop" provisions of the L-1 Visa Reform Act of 2004, the director denied the petition as an impermissible arrangement to provide labor for hire.<sup>1</sup> Specifically, the director concluded that the beneficiary, who will be stationed at a worksite of an unaffiliated employer: (1) will not be supervised and controlled principally by the petitioning employer; and (2) he will be employed in a position which is essentially an arrangement to provide labor for hire for the unaffiliated employer, Network Appliance, Inc. (hereinafter "the unaffiliated employer"). In addition, the director concluded that the petitioner failed to establish that the beneficiary will be employed in a specialized knowledge capacity or that the beneficiary possesses specialized knowledge.

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<sup>1</sup>The term "job shop" is commonly used to describe a firm that petitions for aliens in L-1B status to contract their services to other companies, often at wages that undercut the salaries paid to U.S. workers. Upon introducing the L-1 Visa Reform Act, Senator Saxby Chambliss described the abuse as follows:

The situation in question arises when a company with both foreign and U.S.-based operations obtains an L-1 visa to transfer a foreign employee who has "specialized knowledge" of the company's product or processes. The problem occurs only when an employee with specialized knowledge is placed offsite at the business location of a third party company. In this context, if the L-1 employee does not bring anything more than generic knowledge of the third party company's operations, the foreign worker is acting more like an H-1B professional than a true intracompany transferee. Outsourcing an L-1 worker in this way has resulted in American workers being displaced at the third party company.

149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003).

In general, the L-1B visa classification does not currently include the same U.S. worker protection provisions as the H-1B visa classification. *See generally*, 8 C.F.R. §§ 214.2(h) and (l). The L-1B visa classification is not subject to a numerical cap, does not require the employer to certify that the alien will be paid the "prevailing wage," and does not require the employer to pay for the return transportation costs if the alien is dismissed from employment. Additionally, an employer who files a petition to classify an alien as an L-1B nonimmigrant is not be required to pay the \$1,500 fee for each new H-1B petition which funds job training and low-income scholarships for U.S. workers. *See* Section 214(c)(9) of the Act.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, the petitioner disputes the director's finding that the circumstances of this matter represent an impermissible "labor for hire" arrangement. The petitioner contends that the beneficiary will be controlled and supervised at all times by a manager within the petitioning company, and asserts that the director incorrectly determined that the beneficiary would be merely providing "programming services" for the unaffiliated employer. The petitioner emphasizes that the beneficiary is needed to transfer his knowledge of the petitioner's best practices to other engineers working on the project and to ensure that the petitioner's processes and methodologies are carried out. The petitioner further asserts that the beneficiary possesses advanced specialized knowledge of the petitioner's software engineering processes, methodologies and project management processes related to Enterprise Application Integration (EAI), and is specifically needed for "his knowledge of and experience relating to the project development and implementation processes using [the petitioner's] best practices." The petitioner provides additional information regarding these "best practices" and contends that the beneficiary's knowledge and experience sets him apart from other employees assigned to the same project.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

## **I. Procedural History**

The nonimmigrant petition was filed on July 26, 2007. In a letter dated July 19, 2007, the petitioner provided the following description of the beneficiary's proposed duties as a software engineer within the scope of his assigned project:

[The beneficiary] joined [the petitioning company] in September 2004 to work with the Enterprise Application Integration Team on the U.S. side of [the company's] Mitchell International dual-shore project. In 2005, we needed [the beneficiary's] expertise on the Vendor Management Systems (VMS) project for Ameriquest. We now require [the beneficiary's] expertise to work as the onsite lead on the U.S. side of [the company's] Web Services App Maintenance dual-shore project for [the unaffiliated employer]. [The petitioner] is involved with the development, enhancement and maintenance of multiple applications including: Mynetapp intranet site, HRAF (internal HR onboarding & offboarding [sic] application), CED (Central Employee Directory), GTM (Go To Market tool), and CDP (Contracted Delivery Partners Tool).

A key pre-requisite for working on the project is prior specialized knowledge of modules and functionalities of the applications that are being deployed and/or integrated with other modules as well as specialized knowledge of [the petitioner's] internal processes, product design, and our specific development and implementation methodologies.

[The beneficiary] will be responsible for the coordination of monthly release items for Internal Web releases for MyNetApp, CED and HRAF. His duties will include gathering requirements for upcoming releases from business and application owners; documenting requirements and sharing with business and application owners and offshore team; conducting design and test case review with application owners and offshore team; conducting code review and make sure that offshore team incorporates code review comments; sanity/unit testing using test cases developed and providing comments to offshore team; building stage environment and letting business and application owners perform UAT; communicating UAT comments to offshore team and ensuring that the changes get incorporated; making sure that macros, properties and release note are ready for each release, and participating in the monthly release. In addition, [the beneficiary] will be responsible for providing support for: Voucher Data upload, Voucher Support for data issues, CED profile issues, HRAF request issues, and producing issue support in HRAF, CED and mynetapp.

In order to successfully perform these duties, an individual must have expertise and work experience in the following skills: Weblogic Server, Weblogic Portal, JSP, Java, XML, UML, AJAX, DWR, Rational Rose Tools, Oracle, Spring Framework, Hibernate, Windows XP and Sun OS. In addition, an individual must have proprietary knowledge of [the petitioner's] Quality Assurance and internal processes used to implement these technologies.

The petitioner stated that, prior to his transfer to the United States, the beneficiary was employed by its Indian subsidiary from April 2000 through September 2004 as a Senior Systems Analyst, where he performed the following duties:

At [the foreign entity], [the beneficiary] was a member of the Enterprise Application Integration team working on [petitioner's] Mitchell International dual-shore project. The project involved integration of collision repair and insurance application modules, and the application integration was carried out using Weblogic. [The beneficiary] was responsible for writing, maintaining PERL Scripts for different administrative tasks and extracting log files; module feature breakdown and definition based on technical requirements; high level design and documentation; designing low level documents for core services; Enterprise Java beans development and deployment, front-end architecture using Swing components for front-end design; ensuring usage of software process by engineers throughout development life cycle; and using WLI task controls to initial initiate WLI tasks wherever a manual intervention is required.

The petitioner emphasized that the beneficiary has over seven years of experience with the petitioner and its foreign subsidiary and that he "has gained extensive experience and proprietary knowledge of [the petitioner's] software engineering, Quality Assurance and project management processes and methodologies." The petitioner stated that all employees within its international organization "are provided with extensive training covering our internal processes and Quality Management System to ensure strict adherence to laid down standards and delivery norms." The petitioner indicated that its employees also receive "business domain training specific to customer requirements."

The petitioner indicated on Form I-129 that the beneficiary would work at the petitioner's Palo Alto, California address, and at [REDACTED] in Sunnyvale, California. On the L Classification Supplement to Form I-129, the petitioner stated that the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer, and that he would remain under the direction and control of the petitioning company while working offsite. Where asked to indicate how the beneficiary's duties at another worksite relate to the need for the specialized knowledge he possesses, the petitioner indicated that a "key prerequisite for working on the project is prior specialized knowledge of the modules & functionalities being deployed and/or integrated with the existing modules in adherence to [the petitioner's] internal processes, product design and QMS standards and specifications."

In support of the petition, the petitioner submitted a five-page document labeled "Exhibit A, Statement of Work" for the "Web services App Maintenance" project to be carried out by the petitioner for the unaffiliated employer. The statement identifies the unaffiliated employer's need for "IT support who can act proactively on the day to day administrative/development/enhancements and any special development tasks" for areas such as "ongoing releases and bug fixes" for the client's web site. The beneficiary is identified as the "onsite lead" for the work, with four offshore developers also assigned to the project. The petitioner also submitted a detailed resume for the beneficiary, and evidence of his educational qualifications, which include a bachelor's degree in electrical and electronics engineering.

The petitioner also submitted various excerpts from its public web site, which briefly describe the technical solutions the company provides to various industries, the company's "Dual-shore Engineering Initiative," and its Application Integration Solutions practice.

On September 10, 2007, the director issued a request for additional evidence. The director referred to the provisions of the L-1 Visa Reform Act of 2004, and advised the petitioner that it had provided insufficient

evidence concerning the location where the beneficiary will work, the product or service to which the beneficiary will be providing specialized knowledge, and/or the conditions of employment. Therefore, the director instructed the petitioner to provide evidence that establishes: that the beneficiary has the required specialized knowledge; that he will be controlled and supervised principally by the petitioner; the location where the beneficiary will work; and that the placement of the beneficiary is not merely to provide labor for hire.

The director instructed that such evidence should include, but is not limited to, the following: (1) evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor; (2) copies of contracts, statements of work, work orders, and/or service agreements between the petitioner and the unaffiliated employer for the services or products to be provided; (3) proof that the client purchased and received the petitioner's product or service; (4) copies of the petitioner's human resource records that provide the beneficiary's job description and worksite location; (5) a copy of the pertinent parts of the petitioner's milestone plan showing the beginning and ending dates for the product or service to be provided; and (6) copies of press releases that discuss the product or service to be provided by the petitioner to the unaffiliated employer. The director also requested an organizational chart for the U.S. company depicting the structure at the location where the beneficiary will be employed, and a table showing the total number of foreign nationals working at the same U.S. location where the beneficiary will work. The director emphasized that it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge.

The petitioner's response to the request for evidence included a letter dated November 28, 2007, and supporting documentary evidence. The petitioner provided the requested chart depicting foreign national employees assigned to the worksite to which the beneficiary will be assigned. The chart, included one H-1B and ten L-1 employees, mostly software engineers and consultants, who are working at the unaffiliated employer's are described as working on site "on different aspects" of the "Net-App Portal Engagement Plan."

In response to the director's request for additional evidence related to the beneficiary's "uncommon knowledge" the petitioner indicated that he is the onsite lead for the petitioner's "Web Services Application Maintenance dual-shore project," and reiterated the position description that was provided in the petitioner's letter dated July 19, 2007. The petitioner elaborated as follows:

This position requires an individual to perform all of the above-listed tasks while incorporating and utilizing [the petitioner's] software engineering specific implementation methodologies and its proprietary tools to develop lifecycle and applications utilizing JSP and/or manipulate the Oracle, db2 Framework. [The petitioner's] methodology is an enhanced version of the Enterprise Technologies implementation methodology called Enterprise Application Integration, which was developed by [the beneficiary] and other engineers in the Enterprise Application Integration Team at [the foreign entity] in India. Enterprise Application Integration (EAI) is an Off-shore-Onsite delivery model that distributes resources efficiently for implementation and deployment of projects at customer's worldwide location.

The beneficiary possesses advanced specialized knowledge of [the petitioner's] software engineering processes, methodologies and project management processes related to EAI.

Specifically, [the beneficiary] helped to devise the specific procedures that govern the project tracking and implementation process. This advanced knowledge was gained through [the beneficiary's] over seven years of employment with [the petitioner's group] and his experience working as a member of [the petitioner's] Enterprise Application Integration Team. This knowledge is unique to [the petitioner] and specifically, the EAI team, and is different from what is generally found in our industry. Through this experience he has also had access to many of our customer's proprietary technologies including source codes, design and product architecture.

The petitioner further explained that it is involved with the development, enhancement and maintenance of several applications for the unaffiliated employer, and emphasized that the company "has developed the methodology, the architecture, and the toolsets required to build cost-effective integration solutions that deliver solid return on investment." The petitioner noted that it works with its clients to determine the most appropriate EAI strategy for each organization and also serves large corporations "by supporting and managing their outsourced enterprise applications over long term." The petitioner stated that it has developed an "Application Management Practice Solution (AMPS)," which "provides a full suite of processes, procedures, tools, and operating best practices that substantially accelerate the implementation," and requires a mix of resources at the client site and at the offshore Global Development Center. The petitioner concluded that it needs the beneficiary's "extensive knowledge of [the company's] proprietary EAI software engineering processes, methodologies and project management processes to ensure the success of the project."

The petitioner submitted a letter dated November 20, 2007 from the foreign entity's head of human resources, which who confirmed that the beneficiary "gained specialized knowledge of [the company's] software engineering processes, methodologies and project management processes related to EAI," during his tenure with the Indian company.

In support of its response, the petitioner submitted a copy of a 28-page document published by the foreign entity entitled "NetApp-Portal Engagement Plan." The engagement overview indicates that the petitioning organization, including its offshore Global Development Center, has a contract for the maintenance of the unaffiliated employer's internet site and maintenance of nine other Intranet J2EE and Perl applications. The "scope of work" is described as follows:

This project involves product (software applications of the customer) support in terms of defect fixing logged in the netapp defect tracking system (Bugzilla), minor GUI/Functionality enhancements (that can be covered with in the monthly releases) legged in the netapp eHelpDesk and major enhancements (that can't be covered in a single monthly release, but can be covered in maximum two months release).

The engagement plan indicates that the unaffiliated employer will provide the petitioner with all technical information documents related to the applications under the scope of the engagement, existing versions (code base) of applications that the petitioner will support, and the unaffiliated employer's coding standards documents for development. The document identifies the beneficiary and a practice director as onsite employees, and a total of 12 resources in India including a practice director, project manager, and ten developers. The engagement plan indicates that the Global Development Center staff assigned to the project had completed "Knowledge Transition" for the nine intranet applications to be maintained under the plan. The

engagement plan also states that the role of the “onsite coordinator,” i.e., the beneficiary’s proposed role, will be “to capture requirements, seeking clarifications, design/analysis reviews by [the unaffiliated employer’s] sr. developers.”

The petitioner indicated that the beneficiary will report to [REDACTED] Engagement Manager, an employee of the petitioning company who is also assigned to the worksite of the unaffiliated employer. The petitioner stated that it “exercises full control over the details and length of the assignment,” and is responsible for evaluating the beneficiary’s work product.

The director denied the petition on December 27, 2007, after reviewing the petitioner’s response to the request for evidence. The director concluded that the placement of the beneficiary at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. The director also concluded that the petitioner had not established that the beneficiary would be supervised and controlled principally by the petitioning company. Thus, the director determined that the beneficiary is not eligible for employment at the unaffiliated employer’s worksite pursuant to the provisions of the L-1 Visa Reform Act. The director further determined that the petitioner had failed to establish that the beneficiary that possesses specialized knowledge or that he would be employed in a capacity requiring specialized knowledge.

Upon review, and for the reasons discussed herein, the AAO concurs with the director’s denial of the petition.

## **II. L-1 Visa Reform Act**

The first issue to be addressed is whether the conditions of the beneficiary’s proposed L-1B employment at the worksite of the unaffiliated employer are in compliance with the terms of the L-1 Visa Reform Act of 2004.

As amended by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F), provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 1101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act was created by the L-1 Visa Reform Act of 2004 and is applicable to all L-1B

petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). The primary purpose of the L-1 Visa Reform Act amendment was to prohibit the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <[http://judiciary.senate.gov/member\\_statement.cfm?id=878&wit\\_id=3355](http://judiciary.senate.gov/member_statement.cfm?id=878&wit_id=3355)> (accessed on September 5, 2008).

In evaluating a petition subject to the terms of the L-1 Visa Reform Act, the AAO must emphasize that the petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

#### **A. Threshold Question: Worksite of Beneficiary**

As a threshold question in the analysis, Citizenship and Immigration Services (CIS) must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. Section 214(c)(2)(F) of the Act.

On Page 2 of the Form I-129, in the field entitled "Address where the person(s) will work," the petitioner stated that the work location for the beneficiary will be at the petitioner's Los Gatos, California address, and at [REDACTED] in Sunnyvale, California. On the L Classification Supplement to Form I-129, the petitioner indicated that the beneficiary would be stationed primarily offsite at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent. The petitioner indicated in its letter dated July 19, 2007 that the beneficiary would need to work at the worksite of the unaffiliated employer. Accordingly, the AAO concludes that the beneficiary will be primarily employed as a software engineer at the worksite of the unaffiliated employer.

Therefore, under the terms of the L-1 Visa Reform Act, the petitioner must establish both: (1) that the alien will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. The director determined that the petitioner had failed to establish that the proposed employment at the unaffiliated employer's worksite would meet either of these criteria.

#### **B. Control and Supervision of Beneficiary**

Pursuant to section 214(c)(2)(F)(i) of the Act, the first question is whether the petitioner has established that

the alien will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer.

The petitioner asserted on the L Classification to Form I-129 that the petitioner will be the beneficiary's sole employer, "will exercise control over the details of the work to be performed and will provide the materials, tools and equipment necessary for the job." The petitioner indicated that the beneficiary would remain on its payroll and under its direction and control, and that it would determine the length of his assignment. The petitioner further explained as follows in its letter dated July 19, 2007:

[The petitioner] exercises control over the details of the work performed, and provides the materials, tools, and equipment necessary to perform the job. [The petitioner] also determines the starting and ending time of the work day, and the length of the assignment at the client site. All of our employees remain on our payroll and under our direction and control, even when working at client sites. [The petitioner] is responsible for paying, hiring and evaluating [the beneficiary's] work product. [The petitioner] is [the beneficiary's] sole employer. [The beneficiary] reports to [REDACTED], Vice President, Solutions.

According to the Statement of Work for the Web Services Application Maintenance project between the petitioner and the unaffiliated employer, both companies agreed to designate a project manager to coordinate activities under the statement of work. The unaffiliated employer's project manager may provide the petitioner's employees with "direction" but issues related to the petitioner's employees' performance must be directed to the petitioner's project manager. The statement of work indicates that the unaffiliated employer will be billed at a rate of \$3,800 per week for the beneficiary's services.

In response to the request for evidence, the petitioner stated that it "exercises full control over the details and length of the assignment, and that it will be responsible for "paying, hiring, firing and evaluating [the beneficiary's] work product." The petitioner indicated that the beneficiary will report to [REDACTED], Engagement Manager. The record also contains two organizational charts which depict [REDACTED] as the beneficiary's direct supervisor. The Engagement Plan indicates that [REDACTED] is the "on-site practice director" for the project to which the beneficiary is assigned.

The director concluded that the petitioner had not provided sufficient "competent, objective evidence" to substantiate its claim that it would supervise and control the beneficiary.

On appeal, the petitioner disputes the director's determination and emphasizes that the denial "does not indicate that there is any evidence on record to support this claim, nor does it explain why the petitioner's previous statement that [the petitioner] controls and supervises [the beneficiary's] work is insufficient." The petitioner reiterates its previous statements regarding the petitioner's ongoing supervision and control over the beneficiary's work.

Upon review, the director's determination regarding this sole issue will be withdrawn. The petitioner has submitted sufficient evidence to establish that the beneficiary will report to an employee of the petitioning company who is also assigned as an on-site member of the project undertaken for the unaffiliated employer. USCIS must interpret the term "principally" in accordance with its common usage. According to *Webster's New College Dictionary*, the word "principal" means "first, highest, or foremost in importance, rank, worth, or degree." p. 899 (3rd Ed. 2008). As an adverb, the terms "chiefly" and "mainly" are appropriate synonyms.

Thus, even if the non-affiliated entity exercises some control or supervision over the work performed, the ground of ineligibility does not apply as long as such control and supervision lies first and foremost with the petitioning employer and the employer retains ultimate authority over the worker. The AAO is satisfied that the beneficiary will be controlled and supervised “principally” by the petitioner, and not by the unaffiliated employer.

### **C. Necessity of Specialized Knowledge Specific to the Petitioning Employer**

Pursuant to section 214(c)(2)(F)(ii) of the Act, the second question is whether the petitioner has established that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

The beneficiary's claimed specialized knowledge and his proposed assignment at the worksite of the unaffiliated employer have been discussed, *supra*, and will be discussed further in Part II, *infra*. In denying the petition, the director concluded that the placement of the beneficiary at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

The director observed that the petitioning company is providing programmers for hire to enhance and support the unaffiliated employer's existing systems and/or software rather than to develop the petitioner's own software or systems. The director concluded that, at most, the beneficiary's knowledge appears to be that of the petitioner's tools, procedures and methodologies as applied to the client's existing program. The director therefore determined that the beneficiary's knowledge “may be only tangentially related” to the performance of his duties for the unaffiliated employer.

On appeal, counsel for the petitioner asserts that the beneficiary is not a programmer for hire but rather is “needed for his advanced specialized knowledge of [the petitioner's] software engineering processes, methodologies and project management processes related to EAI.” The petitioner emphasizes that the beneficiary is needed at the unaffiliated employer's site to transfer this knowledge to the “other engineers on the project” and to ensure that the petitioner's processes and methodologies are carried out. The petitioner further states that the beneficiary will be a “technical mentor” to the more junior engineers assigned to the project.

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

With regard to the beneficiary's claimed specialized knowledge, the petitioner has failed to describe with any clarity what constitutes the beneficiary's specialized knowledge, or how the beneficiary would be required to apply his purported specialized knowledge of the petitioner's products or services in the course of fulfilling his assigned duties at the worksite of the unaffiliated employer. The petitioner claims that the beneficiary must apply his “advanced specialized knowledge” of the petitioner's software engineering processes, methodologies and project management processes related to Enterprise Application Integration (EAI)

implementation. However, as discussed further, *infra*, the project to which the beneficiary has been assigned does not involve the implementation of an EAI solution. The unaffiliated employer has what is referred to as a “maintenance contract” with the petitioner that requires the petitioner to maintain, support and update several of the unaffiliated employer’s intranet applications. The beneficiary will not be implementing a solution or system developed by the petitioning company, or providing a service that other information technology companies with comparable capabilities, or even the unaffiliated employer itself, could not provide.

The petitioner claims on appeal that the beneficiary is needed transfer his knowledge of the company’s processes and practices to “junior engineers” assigned to the same project. However, all of the documentation in the record indicates that the beneficiary and his immediate supervisor are the only employees of the petitioning company who would be assigned to work on this particular project at the unaffiliated employer’s worksite. All other identified resources assigned to the project are located at the petitioner’s Global Development Center in India, and report to a different manager overseas. The record remains unclear as to exactly who the beneficiary would be mentoring or to whom he would transfer his knowledge. The petitioner identified a total of 11 other foreign engineers and consultants who have been transferred to the United States and are currently working at the client’s site, but indicated that they are working on “different aspects” of the NetApp-Portal Engagement Plan. Considering that ten of these employees are employed in L-1 status as managers, executives or specialized knowledge professionals, it is reasonable to assume that they are not “junior engineers.” It is insufficient for the petitioner to base its claim on the beneficiary’s need to transfer his “advanced knowledge” to junior engineers without establishing that the beneficiary’s knowledge is advanced, that the knowledge is actually required for the proposed assignment at the unaffiliated employer’s worksite, and without identifying the particular staff to be mentored by the beneficiary.

Based on the statement of work, the project involves supporting the customer’s internal software applications, logging support tasks into the customer’s defect tracking system, performing minor GUI/functionality enhancements requested by the customer, and managing monthly releases. The petitioner is provided with the unaffiliated employer’s software code, technical documentation and coding standards and modifies the client’s software according to the client’s standards. The petitioner has not shown that any of the products or services to be developed will require the application of the petitioner’s own technologies.

While it is possible that the beneficiary here possesses knowledge that is directly related to both the petitioner and the unaffiliated employer’s product or service, it is incumbent upon the petitioner to establish that the position for which the beneficiary’s services are sought is one that primarily requires knowledge specific to that of the petitioner. Otherwise, the beneficiary and the position for which he is being hired would fall squarely within the prohibition imposed by the L-1 Visa Reform Act of 2004 on the “outsourcing” of L-1B nonimmigrants who do not have specialized knowledge related to the provision of a product or service specific to a petitioner.

In this matter, the petitioner’s major failing with regard to this issue was in not providing corroborating evidence that the beneficiary would be employed in a position that primarily requires specialized knowledge of a product or service specific to the petitioner. In other words, whether the beneficiary possesses knowledge of a product or service specific to the petitioner is irrelevant if the position in which he will be employed will not require the use of this knowledge. Other than the unsupported assertions of the petitioner, there is nothing in the record to support the claim that the beneficiary’s placement with the unaffiliated employer is related to

the provision of a product or service for which specialized knowledge *specific to the petitioning employer* is necessary.

To the contrary, a review of the facts of this petition reveal that this is exactly the type of employment relationship the L-1 Visa Reform Act of 2004 was adopted to prohibit. As explained above, this legislation was proposed to primarily prevent the "outsourcing" of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software. In this matter, the petitioner has indicated that the project on which beneficiary will work involves the maintenance, support and enhancement of J2EE applications, using Weblogic Server, Weblogic Portal, JSP, Java, XML, UML, AJAX, DWR, Rational Rose Tools, Oracle, Spring Framework, Hibernate, Windows XP, Sun OS, and applications related specifically to the unaffiliated employer. Importantly, there is no evidence that the petitioner is providing these maintenance and support services in connection with the sale of any technology products, and the beneficiary's purported specialized knowledge has not been established to be related to the petitioner's provision of a service other than the provision of labor.

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

### **III. Specialized Knowledge**

The second issue addressed by the director is: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the beneficiary will be employed by the petitioner in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In denying the petition, the director concluded that the petitioner had failed to establish that the beneficiary possesses specialized knowledge, or that he would be employed in the United States in a capacity that requires specialized knowledge. The director acknowledged the position description submitted by the petitioner but found that the description did not clearly explain, in layman's terms, exactly what the beneficiary will do and how his duties would compare to other employees. The director noted that "it is impossible to determine that these duties are specialized knowledge as opposed to the skills required to use

the petitioner's product, tools, processes or procedures. The director found that the duties performed with the foreign entity and to be performed at the client's work site, as stated, "appear to be essentially that of a skilled worker," in that the beneficiary possesses knowledge that is common among software engineers employed by the petitioner's international organization and by others in the field of information technology. The director concluded that the petitioner had not established that the beneficiary's knowledge is advanced knowledge relative to the industry at large or to the rest of its workforce, or otherwise demonstrated that the beneficiary's knowledge is truly "specialized knowledge" as defined by the statute and regulations.

On appeal, counsel for the petitioner asserts that the petitioner previously submitted evidence that the beneficiary possesses specialized knowledge of the company's "engineering processes, methodologies and project management processes related to EAI," and therefore believes that the director denied the petition in error. In a letter dated January 28, 2008, the petitioner asserts that the position in the United States requires specialized knowledge as defined by the regulations. The petitioner claims that the beneficiary is needed for his "advanced knowledge" of the petitioner's software engineering processes, methodologies and project management processes related to EAI. The petitioner states that, specifically, "he is needed for his knowledge of and experience relating to project development and implementation processes using [the petitioner's] best practices." The petitioner further indicates that the position in the United States will require the beneficiary to transfer this knowledge to other engineers working on the project and to ensure that the processes and methodologies are carried out.

The petitioner further explains the importance of the beneficiary's knowledge and the company's "best practices" as follows:

EAI technology deals with the integration of the business application systems in an organization, which has been a core competency for [the petitioning organization] for several years. Integration projects are very complex and require a lot of experience in successful deployment of the project. Integration of business applications using EAI technology demands that the existing systems be rearchitected [sic] and enhanced so that the enterprise is able to achieve a strategic goal, where in future systems can be replaced and enhanced without creating a ripple effect on the other integrating systems. EAI projects are cross functional in nature and require not only software engineering skills but Senior Architect and Project Management skills, which [the beneficiary] possesses.

[The petitioner's] proprietary EAI best practices are Integration Competency Center (ICC) and Adapter Factory. [The petitioner's] ICC best practice has a set of documented processes, design methodologies, and EAI development processes. Adapter Factory deals with [the petitioner's] reusable frameworks that can be used by customers to rapidly integrate applications. [The beneficiary] has been fully trained [in] these methodologies and has hands on experience in real life usage of them.

Additionally, [the beneficiary] has helped in developing specific project development and implementation processes which are based on [the petitioner's] best practices of EAI development. These procedures deal with an interactive and agile manner for EAI interface development rather than a sequential manner of project delivery. Such processes help the

customer in realizing their business goals and identification of risks at a much earlier stage project lifecycle thereby delivering a successful project.

This specialized knowledge and experience sets [the beneficiary] apart from the other employees on the project because he is responsible for ensuring that [the petitioner's] processes and methodologies are adopted in the right way on the project; ensuring that the timelines and scope of the project are managed; and because he is a technical mentor to the other engineers. [The petitioner's] best practices help the customer in re-engineering existing systems and adopt to [the petitioner's] EAI practices. [The beneficiary's] years of experience in ICC and Adapter Factory enables him to design and architect the use of best practices and advise the customers of any risks involved, something that cannot be done by [the petitioner's] junior integration engineers that are employed on the project.

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

**A. Standard for Specialized Knowledge**

As enacted by the Immigration Act of 1990, section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Looking to the plain language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. In this regard, one Federal district court explained the infeasibility of applying a bright-line test as to what constitutes specialized knowledge to the nature of the term itself:

This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf. Westen, The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

*1756, Inc. v. Attorney General*, 745 F.Supp. 9, 14-15 (D.D.C., 1990).<sup>3</sup>

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<sup>3</sup> Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the former INS definition is equally illuminating when applied to the definition created by Congress.

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the principles of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, the AAO must look to the language of section 214(c)(2)(B) itself, that is, the terms "special" and "advanced." Like the courts, the AAO customarily turns to dictionaries for help in determining whether a word in a statute has a plain or common meaning. *See, e.g., In re A.H. Robins Co.*, 109 F.3d 965, 967-68 (4th Cir. 1997) (using *Webster's Dictionary* for "therefore"). According to *Webster's New College Dictionary*, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." *Webster's New College Dictionary*, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to be within an elevated class of workers within a company and not that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* This legislative history has been widely viewed as supporting a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at \*4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990).

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave legacy INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

In effect, Congress has charged the agency with making a comparison based on a relative idea that has no plain meaning. To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). Specialized knowledge generally requires more than a short period of experience, otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and prove that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses 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. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's industry.

## **B. Analysis**

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, the petitioner fails to establish that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States will require "specialized and advanced knowledge," the petitioner has not adequately articulated any basis to

support this claim. The petitioner has provided a description of the beneficiary's duties, but the description does not mention the application of any special or advanced body of knowledge specific to the petitioning organization which would distinguish the beneficiary's role from that of other consultants employed by the petitioner or the information technology industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The beneficiary's job description, as initially stated, indicated that he would be required to apply expertise and work experience in skills that are common among information technology consultants, including Weblogic Server, Weblogic Portal, JSP, Java, XML, UML, AJAX, DWR, Rational Rose Tools, Oracle, Spring Framework, Hibernate, Windows XP and Sun OS. None of these technologies are specific to the petitioning organization.

With respect to the beneficiary's claimed specialized knowledge, the petitioner initially stated that the position requires, and the beneficiary possesses, "proprietary knowledge of [the petitioner's] Quality Assurance and internal processes used to implement" the above-referenced non-proprietary technologies. The petitioner also emphasized the beneficiary's "proprietary knowledge of its "software engineering, Quality Assurance and project management processes and methodologies." The petitioner did not, however, attempt to define or document its purported proprietary processes and methodologies.

When given an opportunity to further explain the basis for seeking classification of the beneficiary as an employee possessing specialized knowledge, the petitioner explained that the beneficiary possesses "advanced specialized knowledge" of the company's software engineering processes, methodologies and project processes related to EAI," that he was personally involved in developing specific project tracking and implementation procedures, and that this knowledge is unique to the petitioning company, and therefore different from what is generally found in the industry. The petitioner further explained that the company has developed an "enhanced version" of EAI technology developed by Enterprise Technologies, an unrelated company, and that the petitioner has "proprietary tools" used for EAI implementation projects. The petitioner, again, offered no supporting documentary evidence further describing the claimed proprietary processes, methodologies or project processes, no evidence that the beneficiary had in fact participated in the development of such processes, and no explanation as to how the petitioner's "enhanced version" of the EAI technology differs from that of other consulting companies who provide EAI implementation services and that have presumably developed their own EAI solutions and processes for carrying out EAI projects. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Here, the director specifically requested that the petitioner provide evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in his field of endeavor. The petitioner was also advised that any assertions regarding the beneficiary's advanced level of knowledge of the company's processes and procedures must be supported by evidence describing and setting apart that knowledge from that possessed by other similarly employed workers. The petitioner failed to submit the requested description of the beneficiary's "advanced knowledge" or any documentary evidence related to the claimed knowledge. The petition cannot be approved based on the petitioner's unsupported assertion that the beneficiary possesses specialized knowledge of the company's processes when those processes and their application to the proffered position in the United States have not

been documented. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner again references the beneficiary's "advanced specialized knowledge" of the petitioner's "software engineering processes, methodologies and project management processes related to EAI," and specifies for the first time that such knowledge relates to "the project development and implementation processes using [the company's] best practices." The petitioner also states that the beneficiary will "transfer" this knowledge to the other engineers on the project. As noted in Part I, *supra*, based on evidence submitted by the petitioner, all of the other engineers assigned to the project on which the beneficiary will work are located in the foreign entity's Global Development Center in India, and they report directly to the offshore project manager. The petitioner's new claim that the beneficiary is needed to transfer his knowledge of the company's best practices to other engineers, when a more senior employee supervises them in India on a day-to-day basis, has not been adequately explained or documented. While other engineers and consultants from the petitioning company appear to be working on different aspects or components of the "NetApp Portal Engagement" at the unaffiliated employer's worksite, there is no evidence in the record to establish whether or how the beneficiary would interact with them. His role, as defined in the statement of work and the engagement, appears to be limited to interactions with his on-site supervisor, the unaffiliated employer's personnel, and developers who are located offshore. Finally, it is unclear why this key responsibility for transferring knowledge of best practices to other engineering staff was not included in prior versions of the beneficiary's position description, but rather, mentioned for the first time on appeal.

In addition, the petitioner indicates on appeal that the beneficiary has been "fully trained" in ICC and Adapter Factory methodologies and has "hands on experience in real life usage of them," but it does not provide documentary evidence of the beneficiary's training nor document his prior use of these technologies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner stated in its letter dated July 19, 2007 that "all [company] employees, including our employees in India, are provided with extensive training covering our internal processes and Quality Management System to ensure strict adherence to laid down standards and delivery norms." The petitioner has failed to submit evidence that the beneficiary has received training beyond that which is received by all company employees employed in similar roles. Moreover, the petitioner has not provided information regarding the type and length of training its employees typically receive or specified the type and length of training received by the beneficiary. Accordingly, the AAO cannot conclude that the knowledge held by the beneficiary could not easily be transferred to another employee with a similar educational and professional background. Regardless, if all similarly employed workers within the petitioner's organization receive the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The petitioner did not distinguish the beneficiary's knowledge, work experience, or training from those of the other employees. The lack of evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's EAI project processes as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. Although knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to simply allow the transfer of experienced employees, with any degree of knowledge of a company's products or processes. It may be correct to say that the beneficiary is a highly skilled employee, but this is not enough to bring the beneficiary to the level of an employee with specialized knowledge.

Furthermore, if the beneficiary's claimed advanced knowledge of the petitioner's Adapter Factory and ICC methodologies is critical to the petitioner's claim that he possesses specialized knowledge, it is not clear why the petitioner mentions this purported knowledge for the first time on appeal. There is no prior reference to either methodology in any documentation submitted for review prior to the adjudication of the petition, and if such methodologies are in fact so critical to the petitioner's claim, the petitioner's failure to mention them when responding to the director's request for evidence is questionable. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Based on the foregoing, the AAO concurs with the director's finding that the petitioner did not adequately describe or document the beneficiary's proposed duties or claimed specialized knowledge.

In addition, the AAO has noted another deficiency in the petitioner's claims that was not observed by the director. The beneficiary's claimed specialized knowledge is based on the beneficiary's alleged training, skill, knowledge and experience relating to the petitioner's methodologies, practices and procedures for EAI projects. However, it is evident from the evidence submitted that the proposed project is not an EAI project and does not involve the company's application integration processes and project methodologies.

When asked to provide a detailed description of the product or service being provided to the petitioner's client, the petitioner generally described its EAI solutions, but also described its Application Management Practice Solution (APMS), a service by which the petitioner provides long-term support for its client's applications. According to the petitioner's public web site, the company's APMS services include application maintenance and enhancements, such as ongoing application releases, bug fixes, feature changes, minor functionality enhancements, technology upgrades, application support to IT and end users, and Quality Assurance/release management. *See* [http://www.infoain.com/Eit/application\\_management.jsp](http://www.infoain.com/Eit/application_management.jsp). These services are essentially identical to the services to be provided to the unaffiliated employer in the United States, as described in the submitted statement of work and engagement plan. Rather than implementing an EAI solution for the client, the beneficiary will be providing application management services, specifically, supporting several of the customer's J2EE intranet applications, debugging them, performing minor enhancements to the client's existing code, and managing new releases of the applications. Even if the petitioner had established that the beneficiary possesses specialized knowledge of its EAI processes, methodologies and practices, the record does not establish that the proposed role requires such knowledge. Furthermore, the petitioner has not documented that the beneficiary has any prior experience with application management projects similar to the project for the unaffiliated employer, nor has it indicated that such knowledge or experience is required for the proposed position.

Moreover, a review of the responsibilities and requirements for the beneficiary's U.S. position confirms the director's finding that the offered position requires a skilled information technology consultant rather than an individual who possesses specialized knowledge specific to the petitioning organization. The petitioner's employees are provided with the client company's technical documentation, existing code, coding standards, requirements specifications for requested bug fixes, changes and enhancements, and any available test data, and the petitioner will utilize this information regarding the client's applications to perform the contracted services of maintaining, debugging, enhancing and managing new releases of the applications. The petitioner has not identified any aspect of the beneficiary's position that would require him to apply specialized knowledge relating to the petitioning company's products, processes or other interests. The duties and requirements of the position appear to have primarily been determined by the client, and thus reflect the

unaffiliated employer's interests, standards and requirements. While the AAO does not doubt that the petitioning organization has developed internal processes and methodologies for carrying out client projects, the petitioner has not documented how familiarity or experience with these procedures would rise to the level of specialized knowledge.

Despite the petitioner's assertions, the petitioner has not established that the beneficiary's knowledge of software development, either in the context of the ongoing project being performed for the unaffiliated employer or in connection with his employment with the petitioner, constitutes "specialized knowledge." The record does not reveal the material difference between the beneficiary's knowledge of the petitioner's unidentified "processes" and the ongoing application maintenance project and the knowledge possessed by similarly experienced information technology analysts in the industry or in the petitioner's own organization. Without producing evidence that the petitioner's consulting services are different in some material way from similar services offered on the market by similarly experienced software professionals, the petitioner cannot establish that the beneficiary's knowledge is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by similarly experienced personnel engaged within the beneficiary's field of endeavor. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced information technology consultant who has been, and would be, a valuable asset to the petitioner's organization and to the unaffiliated employer. However, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other software engineers working in the information technology consulting sector. The beneficiary is claimed to have specialized knowledge of the petitioner's processes "related to EAI projects." However, as the petitioner has failed to document any specific training or otherwise describe or document how the beneficiary gained the purported knowledge, and as the petitioner has failed to establish that the beneficiary will be assigned to an EAI project, these claims are not persuasive. There is no indication that the beneficiary has any knowledge that exceeds that of any experienced software engineering consultant, or that he has received special training in the company's methodologies or processes which would separate him from any other software engineers employed within the petitioner's international organization. The petitioner failed to demonstrate that the beneficiary's knowledge is more than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

The AAO does not dispute that the petitioner's organization, like any software consulting company, has its own internal processes and methodologies which it applies to project development and delivery. However, there is no evidence in the record to establish that the beneficiary's knowledge of these processes and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the purported "advanced knowledge." The petitioner has simply submitted no documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the petitioning organization's processes, procedures and methodologies would differentiate him from any other similarly employed software engineer within the petitioner's group or within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Based on the evidence presented, the petitioner has not established that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a capacity involving specialized knowledge. For this additional reason, the appeal will be dismissed.

#### **IV. Conclusion**

The AAO acknowledges that USCIS previously approved two L-1B nonimmigrant petitions filed on behalf of the beneficiary. First, the AAO notes that the L-1 Visa Reform Act applies all L-1B petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). Second, the prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). It must be emphasized that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

If other nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions by the petitioner for similar positions, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petition will be denied and the appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. *Here, that burden has not been met.*

**ORDER:** The appeal is dismissed.