U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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File: WAC 08 131 50512 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2009

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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, a Delaware corporation, filed this nonimmigrant visa petition to employ the beneficiary in the position of "master black belt, OPNA Research & Development" as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims to have a qualifying relationship with the beneficiary's foreign employer in Mexico.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, counsel argues that the beneficiary, as a "master black belt," has specialized knowledge of the petitioning organization's products, methods, tools, policies, and procedures.

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

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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.

The petitioner describes the beneficiary's proposed duties in the United States, and his claimed specialized knowledge, in a letter dated March 18, 2008 as a "master black belt" as follows:

- Organizing, planning, and leading Six Sigma projects, and converting marketing and consumer needs into process-capable product designs;
- Conducting product feasibility and qualifications to confirm new design concepts;
- Utilizing all aspects of Product Development (PD) launch process, including involvement of Six Sigma tools;
- Serving as key integrator between functions a [sic] the project team level including product development, purchasing, operations, and marketing, to ensure projects move forward;
- Providing training to Operations on new products;
- Assuring appropriate and timely communication of all new products;
- Coordinating, executing, and following up on assigned projects, escalating to PD Manager as appropriate, assuring timely delivery and acceptable results;
  Maintaining close communication and collaboration with Product Development, Marketing, Planning, Quality, and Operations;
- Defining specification and populating QSI for finished goods and raw material parts;
- Providing training and leadership to other PD Engineers to facilitate the DFLS rollout; and,
- Providing training and coaching to PD Engineers in Juarez, Brea, and Tijuana in the use of DFLS tools.

The petitioner also describes the beneficiary's purported specialized knowledge as follows:

> The position of Master Black Belt, OPNA Research & Development represents an important and [sic] role within [the petitioning organization], requiring an individual of proven expertise and a high level of proprietary knowledge of [the petitioning organization's] diverse business units, functions, and OPNA Lean Sigma strategies. In addition, specialized knowledge of [the

> petitioning organizaton's] corporate and manufacturing environment operations is necessary and integral to continue to achieve our direct relationship with a manufacturing site at [a petitioning organization] office.

The record is devoid of evidence corroborating the claims in the March 18, 2008 letter pertaining to the beneficiary's claimed specialized knowledge. The record does not contain any evidence concerning the beneficiary's training, if any, or addressing or identifying the specific products, business units, functions, strategies, or operations of which the beneficiary purportedly has special or advanced knowledge.

On April 15, 2008, the director requested additional evidence. The director requested, *inter alia*, an explanation addressing how the beneficiary's duties and training differ from those of other workers employed by the petitioning organization or in the industry at-large and a detailed explanation addressing the equipment, system, product, technique, or service of which the beneficiary purportedly has special or advanced knowledge.

In response, the petitioner submitted a letter dated July 1, 2008. In the letter, the petitioner claims that the beneficiary "was selected based upon his Six Sigma, Lean and Continuous Improvement skills, and proven track record using these skills to support [the petitioning organization's] manufacturing philosophy in both Mexico and the U.S., as well as his proven skills in training and coaching other[s] to implement new processes or improve upon existing processes." The petitioner further describes the beneficiary's Six Sigma skills and training as follows:

> [The beneficiary] was [selected] to undergo training for a Six Sigma Black Belt position, which he held from July 2001 to June 2002. Six Sigma is a disciplined approach used to reduce process variations to the extent that the level of defects are drastically reduced to less than 3.4 millionth processes. This method is used by Fortune 500 manufacturing companies, and relies heavily on advanced statistical tools. Each company develops their own techniques based on their operations using Six Sigma's statistical methodologies. These methodologies are aimed at developing process improvements to make business processes more efficient and reduce internal costs. The few individuals who are chosen for the Six Sigma function are those who have demonstrated exceptional technical and statistical skills as well [as] effective leadership qualities and most importantly, an in-depth understanding of [the petitioning organization's] manufacturing operations for the analysis, development and implementation of process strategies.

The petitioner claims the beneficiary was elevated in 2002 to "master black belt," a senior Six Sigma position.

Finally, the petitioner addresses the director's evidentiary requests pertaining to its products and the beneficiary's knowledge and training, as these compare to other workers, as follows:

> Regarding [the U.S. Citizenship and Immigration Services (USCIS)] request for more detail exactly what is the equipment, system, product, technique, or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the U.S. and abroad, at the detailed level, in order to strengthen and accelerate developmental efforts within the company, [the petitioning organization] introduced a new product development process (NPD) in 2008. This includes the DfLS process, which has been a year in development,

> and is part of [the petitioning organization's] overall commitment to incorporating Enterprise Lean Sigma principles and best practices taken from companies that work on the cutting edge of innovation. This DfLS method requires a totally new approach [sic] the design, development, and launch of new products or product improvements. This includes using new methods and tools that are unique to DfLS, including Project Risk Assessment (FMEA); Pugh Matrix, Creativity & TRIX and AHP Pairwise selection methods; and, Linear Regression, ANOVA and Correlation of Critical Inputs and Outputs Matrix, Statistical Tolerancing, Design for Manufacturing & Assembly, and Design Failure Mode Effects Analysis (DFMEA) and Measurement System Analysis. Other more widely known, but still highly specialized, Six Sigma tools which are also employed within the DfLS process include Design of Experiments, Kaizen, Numerical Evaluation of Metrics, and Control Charting.
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> You have also asked for explanation of how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by other practitioners in the beneficiary's field in comparison to that of others employed by the company in this particular field. [The beneficiary] has achieved a Master Black Belt certification with Six Sigma, which provided him with the highest level of proficiency within Six Sigma at [the petitioning organization]. This supports the basic needs for Six Sigma skills required for Design for Lean Sigma (DfLS) rollout. He has also completed DfLS training externally, which provides him with the unique skills mentioned above. At this time, there is only one individual within the corporation with a high level of DfLS training and experience, and that individual is employed at the corporate level, driving the corporate development of process and standards.

On July 18, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge.

On appeal, the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. The petitioner argues that the beneficiary "has clearly acquired a special knowledge of company product, and an advanced level of knowledge of the process and procedures" of the petitioning organization as well as specialized knowledge of the DfLS process.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The L-1B specialized knowledge classification requires U.S. Citizenship and Immigration Services (USCIS) to distinguish between those employees who possess specialized knowledge from those who do not possess such knowledge. Exactly where USCIS should draw that line is the question before the AAO. On one end of the spectrum, one may find an employee with the minimum one-year of experience but only the basic job-related skill or knowledge that was acquired through that employment. Such a person would not be deemed to possess specialized knowledge under section 101(a)(15)(L) of the Act. On the other end of the spectrum, one may find an employee with ten years of experience and advanced training who developed a product or process that is narrowly understood by a few people within the company. That individual would clearly meet the statutory standard for

specialized knowledge. In between these two extremes would fall, however, the whole range of experience and knowledge that may be found within a workplace.

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

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

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).[1]

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

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

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification

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[1] Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *See* H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

Neither in 1970 nor in 1990 did Congress provide a controlling, unambiguous definition of "specialized knowledge," and a narrow interpretation is consistent with so much of the legislative intent as it is possible to determine. H. Rep. No. 91-851 at 6, 1970 U.S.C.C.A.N. at 2754. This interpretation is consistent with legislative history, which has been largely supportive of a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

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

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

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. In other words, specialized knowledge generally requires more than a short period of experience; otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and 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 advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced "Six Sigma" workers employed by the petitioning organization or in the manufacturing 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary has acquired special or advanced knowledge of company products, processes, and procedures. The petitioner also asserts that the beneficiary has specialized knowledge of the DfLS process. As the petitioner concedes that "Six Sigma" is a method "used by Fortune 500 manufacturing companies," this training, experience, and knowledge alone does not appear to be advanced or special knowledge of a "company product and its application in international markets" or an "advanced level of knowledge of processes and procedures of the company." Section 214(c)(2)(B) of the Act. Moreover, the petitioner failed to identify any equipment, systems, products, techniques, or services of which the beneficiary purportedly has special or advanced knowledge, even though this evidence was requested by the director. 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). Once 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). The burden of proving eligibility for the benefit sought in this proceeding remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

Accordingly, despite the petitioner's claim, the record does not establish how, exactly, the beneficiary's knowledge of the DfLS process, or the companies products or processes, materially differs from knowledge possessed by other Six Sigma trained workers employed by the petitioning organization or by workers in the manufacturing industry at-large. The record does not establish what qualities of the DfLS process are of such complexity that the impartation of this knowledge amounts to the acquisition of special or advanced knowledge. Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's knowledge cannot be imparted to a similarly experienced and educated Six Sigma trained worker in a relatively short period of time. Finally, the record is not persuasive in establishing that the beneficiary's claimed Six Sigma training, combined with his work experience, truly imparted to him knowledge that could reasonably be considered "special" or "advanced." 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by Six Sigma trained workers generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's processes or methodologies does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced Six Sigma worker is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's processes and products do not establish that any knowledge of these is "special" or "advanced." Rather, the petitioner must establish that qualities of the products, methodologies, or processes require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers outside of the petitioning organization may not have very specific knowledge regarding the petitioner's products, methodologies, or processes is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by

simply revealing the information to a newly hired, generally experienced and educated Six Sigma trained worker.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced worker. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced Six Sigma trained worker, or that he has received special training in the company's methodologies or processes which would separate him from other similarly experienced and educated workers employed within the petitioner's organization or in the industry at-large. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

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

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Subsidiary" is defined in part as a legal entity "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K).

In this matter, the petitioner claims that it owns 100% of the stock of the foreign employer in Mexico. However, the only evidence of this claimed qualifying relationship is a document titled "Certificate of Relationship" signed by an employee of the petitioner. The petitioner offered no evidence to substantiate this claim. Once 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)). If the required initial evidence is not submitted with the petition or does not demonstrate eligibility, USCIS may in its discretion deny the petition. 8 C.F.R. § 103.2(b)(8)(ii). Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Accordingly, as the petitioner failed to establish that it has a qualifying relationship with the foreign employer, the petition may not be approved for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.