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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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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.

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 filed this nonimmigrant visa petition to employ the beneficiary 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, a technology, marketing and strategy consulting company incorporated in the State of Washington, states that it is the parent company of the beneficiary's foreign employer located in India. The petitioner seeks to employ the beneficiary as an Application Development and Business Productivity Consultant for a period of three years.

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. In denying the petition, the director observed that the beneficiary's duties appear to be those of a programmer analyst and that the performance of the described duties would not require specialized or advanced knowledge specific to the petitioning organization.

On appeal, counsel for the petitioner asserts that the director misapplied the law as it applies to specialized knowledge workers and failed to fully address the evidence submitted in support of the petitioner's claims that the beneficiary possesses both specialized knowledge of the petitioner's proprietary process and advanced knowledge of the petitioner's processes and procedures. Counsel asserts that the director gave undue weight to unpublished AAO decisions involving "generic IT workers" working for software development and information technology firms, emphasizing that the director mischaracterized the nature of the petitioner's business. Counsel also contends that the director inappropriately dismissed claims that were based on a 1994 legacy Immigration and Naturalization Service (INS) policy memorandum addressing the interpretation of specialized knowledge.[1] Counsel submits a detailed brief and additional documentary evidence in support of the appeal.

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.

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[1] *See* Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Special Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum").

(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 filed the nonimmigrant visa petition on March 14, 2008. The petitioner stated on Form I-129 that the beneficiary will serve in the position of "Application Development and Business Productivity Consultant" in the United States.

Counsel for the petitioner submitted a brief in support of the petition in which he described the beneficiary's experience with the petitioner's foreign subsidiary and claimed specialized knowledge as follows:

> [The beneficiary] has been employed in the management consulting business by [the foreign entity] since July 2005. [He] is currently employed as an Application Development and Business Productivity Consultant. In this role, [the beneficiary] applies his skills in technology application and communication with knowledge of business processes and technology capabilities for delivering software artifacts to satisfy customer requirements, which include technology architecture and presentations for Technical Decision Makers and technology professionals,

including demos and prototypes. He also is responsible for preparing deliverable outlines (taxonomies, TOC etc.), as well as documenting methodologies for technology implementation, frameworks for solution delivery, solution specifications and requirements documentation, and guidance and training materials on methodologies developed.

Counsel stated that the beneficiary's specific duties include the following:

- Perform information collection, literature survey, reference validation, research and relevant knowledge acquisition about a variety of existing and emerging technologies.
- Gain expert level understanding of technology frameworks and standards like Infrastructure Optimization and appreciate their relevance, impact and implementation.
- Perform hands-on development and deployment tasks to gain understanding of technology features, functionalities and architecture.
- Conduct interviews, market surveys, research, etc. to gain information about solution needs, technology trends and business contexts.
- Build plans for appropriate technology implementation phases as per business priorities.
- Identify benefits and capabilities of emerging technologies. Gain in-depth understanding of technology architecture, inter-relationships and dependencies.
- Gain understanding of technology solution provisioning processes and support with relevant analysis at all stages of project life cycle.
- Create and validate requirement, functional and technical specifications.
- Identify technology readiness and demonstration projects and perform required development, deployment and documentation tasks.
- Build proof-of-concept programs and deployments to assess and demonstrate capabilities of emerging technologies in different contexts.
- Contribute to all stages of SDLC, including development and testing leading to product development/project execution.
- Work with clients (external/internal) to identify their needs and transform the same into presentable, effective, relevant and workable deliverable descriptions and execution approach.
- Gather requirements and establish solution needs. Manage product specifications.
- Maintain communication with all project stakeholders and remain abreast with the relevant information about project progress and deliverable statuses.
- Validate critical deliverables, resolve customer issues and ensure relevant action on feedback received.
- Provide knowledge leadership by keeping abreast of technological changes and obtaining in-depth architectural insight.
- Impart technical, process and methodology training to developers, architects and administrators and make presentations about technology applications to audiences, including technology decision makers and IT professionals.

Counsel explained that the petitioner "is not a software development or IT consulting company," but rather assists technology companies with "the roll out and adoption of emerging technology products and solutions by providing . . . marketing and channel strategy analyses, followed by campaign planning and execution." Counsel emphasized that the petitioner does not assist in technological design activities, but does provide services such as

creating presentations, data sheets, demonstrations, code samples, components, white papers, technical guides, marketing, selling and delivery guides. Counsel further explained that the petitioner helps build and execute successful business models for new technologies and provides training, presales and delivery support to accelerate end-user adoption.

Counsel stated that the petitioner "has committed to a strong Microsoft focus in its effort to serve as a strategic catalyst in the adoption of new technology for the Microsoft internal and external partner eco system" and noted that the petitioner "works closely with the Microsoft corporate teams to build strategic marketing guidance, technical thought leadership, solution vision, and marketing/readiness content."

Counsel further stated that the petitioner has developed its own internal processes that are "unique and proprietary." In this regard, counsel further described the petitioner's internal processes as follows:

> [The petitioner] has a unique ability to address a client's entire range of product development, marketing and roll out capabilities in one turnkey location. These internal processes are critical to [the petitioner's] ability to develop a sound and stylish marketing strategy for its clients, from a marketing, design and technology perspective. Such processes are also critical to ensure [the petitioner] maintains its position of prominence in the international marketplace.
>
> In sum, [the petitioner] has developed a unique process by which it can not only understand a client's business situation, but design a full range of scalable solutions to assist technology companies in the roll out of new technologies. [The petitioner] brings together expertise in design, development and support skills in sales and marketing, Enterprise Project Management, the incorporation of Microsoft technology and strategies and developed its own "proprietary" processes [and] systems to assist clients in handling the full range of roll out issues associated with new technologies.

Counsel cited to the 1994 Puleo memorandum and stated that "the current standards to be used to determine whether an employee has specialized knowledge" are whether the employee: (1) possesses knowledge that is valuable to the employer's competitiveness in the market place; (2) is uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions; (3) has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position; and (4) possesses knowledge which can be gained only through extensive prior experience with the employer.

Counsel explained that, generally, the petitioner's consultants are transferred to the United States to assist with projects for U.S. customers and to help cross-train the U.S. employees in processes and procedures used by the Indian subsidiary (and vice versa). Counsel stated that such employees would clearly meet the criteria for specialized knowledge set forth in the Puleo memorandum. Counsel indicated that the beneficiary in particular has an advanced level of knowledge of the foreign entity's proprietary processes and procedures that can only be obtained through employment with the foreign entity, and which will allow him to contribute to the U.S. company's knowledge of the foreign entity's operating conditions.

In support of the petition, the petitioner submitted a copy of a company overview provided to new hires of the U.S. company, which describes the company's four-part strategy of providing strategic consulting, supporting

content, training and communications services, and technology adoption services for Microsoft, its subsidiaries, partners and customers.

Finally, the petitioner submitted a copy of the beneficiary's resume, which shows that he joined the foreign entity in 2005 after completing a Bachelor of Science degree, a post-graduate diploma in computer applications, and a Master of Science degree in information technology. The beneficiary lists his technical skills as: experience in solution development using Microsoft technologies such as SharePoint Server 2007, Office 2007, LCS 2005; Windows application development using C#; Web Application development using ASP.NET with C#; SQL server database; experience in requirements analysis, system analysis and design; preparation of prototypes, functional and technical specifications; and experience in installation of small client/server networks.

The beneficiary indicates that he works as a "project manager" with the foreign entity, where he utilizes "expertise in requirement analysis, solution designing, development, SharePoint Technology and Architecture," and "sound knowledge" of .NET applications, implementing web applications and other tools. The beneficiary's resume describes six projects on which he has worked as project manager, team leader and team member. The projects involved: a research and analysis project comparing features of Microsoft and IBM products; a project involving the migration of three applications from Lotus Notes to Microsoft Technologies; automation of a Finance External Reporting Process according to SEC requirements; a Unified Communication Solution; a Proposals Management Solution; and an Electronic Records Management Solution.

The director issued a request for additional evidence (RFE) on March 19, 2008, in which she requested, *inter alia*, evidence regarding the organizational structure of the U.S. and foreign entities and the locations of the beneficiary's current and proposed positions. The director also requested additional information regarding the number of foreign nationals the petitioner employs in the United States, the positions they hold, and the types of visas they hold, if applicable, as well as information regarding the number of persons holding the same or similar position as the beneficiary in the United States.

In addition, the director instructed the petitioner to: (1) explain any special or advanced duties the beneficiary performs and will perform and how they are different from those performed by other similarly employed workers; (2) explain how the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality compared to the rest of the petitioner's employees; (3) describe in detail the training the beneficiary will provide to U.S. workers and the specialized knowledge involved; (4) explain in more detail exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge; and (5) explain what alternative action the petitioner will take if unable to obtain the beneficiary's services.

Counsel submitted a brief in reply to the RFE on June 9, 2008. Counsel stated that the petitioner employs 36 personnel of which seven hold positions that are the same or similar to the beneficiary's proposed role, which is "generically termed 'Enterprise Technology Strategist' or 'ETS.'" Counsel noted that the petitioner's organizational chart shows five ETS positions currently available in the United States.[2] Counsel remarked that

[2] The U.S. organizational chart to which counsel referred actually shows that the beneficiary will fill an open "Project Manager" position and will report directly to an "Engagement Manager." The chart shows a total of four project manager positions and four engagement manager positions which report to a "PMO Director." The ETS positions have an entirely different reporting structure.

"all ETS personnel generally provide the same services to [the petitioner's] customers," but noted that the beneficiary's skills are considered unique due to his experience with and architectural knowledge of Microsoft Unified Communications Technology gained during multiple projects. Counsel stated that this technology is utilized by "high-end corporate accounts," and is not a retail product that is readily utilized by companies that use Microsoft products to operate their businesses. Counsel asserted that "any individual or company that can provide extensive expertise in this area is unique in the industry."

Counsel explained that the petitioner's "unique" service is its "4-prong strategy for rolling out their new technologies," which includes: (1) Strategic Consulting; (2) Content Preparation; (3) Training and "Evangelism"; and (4) Pre-Sales Support. Counsel stated that the petitioner's services are "unique in that all other management consulting companies specialize in just one or two of these four aspects of technology roll-outs."

Counsel emphasized that the beneficiary, during his three years with the petitioner's foreign subsidiary, has learned to understand and effectively utilize the petitioner's internally-developed 4-prong strategy. Counsel stated that such knowledge is "specialized" because it can only be gained through extensive prior experience with the employer. Counsel further stated that the knowledge is specialized because it makes the beneficiary "uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions." Counsel explained that the knowledge will enable the beneficiary to train U.S. personnel in the 4-pronged management system and in how the foreign entity conducts business. Counsel noted that the U.S. company does not perform all of the technical functions performed by the foreign entity, and stated that the cross training is necessary to ensure smooth collaboration between team members, understanding of U.S. customer requirements and environment by foreign employees, facilitation of communications, and to ensure U.S. team members' understanding of the capabilities of the Indian team.

The petitioner's response also included an e-mail message addressed to counsel which further addresses the inquiries made in the RFE. In response to the director's inquiry regarding the training the beneficiary would provide to U.S. employees, the petitioner stated:

> [The beneficiary] has worked on many US projects from India. As part of training, he is going to share the best practices on how to work with the global team for technology related projects. He will also train associates in the US on various US UC technologies.

The petitioner stated that the beneficiary would receive the following training while in the United States:

> During his stay in the US, [the beneficiary] will receive training on customer interactions. He will also receive additional training in the competitive technologies of Microsoft Unified Communications. This will help him in understanding the competitive advantages and architect integrated environments better.

The director denied the petition on June 20, 2008, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity requiring specialized knowledge. In denying the petition, the director acknowledged the position description submitted and found that such duties appear to be the "normal duties of a programmer analyst" rather than duties that require knowledge of the petitioner's products, equipment, service, process or procedures. With respect to whether the

beneficiary performs advanced duties, the director acknowledged the petitioner's claim that the beneficiary's experience with Microsoft Unified Communication Technology is "unique in the industry." However, the director observed: (1) that the petitioner did not state that this knowledge is required to perform the proposed duties in the United States; and (2) that expertise in Microsoft technologies is not specific to the petitioning organization.

Accordingly, the director determined that the petitioner failed to establish that the beneficiary has unusual, advanced or specialized knowledge of the petitioning organization that would be gained only by the completion of substantial or extensive specialized training, education or experience directly related to the duties of the proffered position.

On appeal, counsel for the petitioner, objects to the director's conclusion that the proffered position is that of a "programmer analyst," and that as such cannot qualify as a position requiring specialized knowledge. Counsel notes that the director did not acknowledge the petitioner's "unique 4-prong strategy" for helping its clients launch products and emphasizes that "it was the beneficiary's knowledge of [the petitioner's] 4-prong strategy that was critical to the performance of his duties and was, as such, the beneficiary's specialized knowledge in this instance."

Counsel further contends that the director misapplied a series of unpublished AAO decisions issued on February 1, 2008, which address extension requests for "generic" IT employees of IT consulting companies and software development companies. Counsel asserts that the director "appears to have taken these decisions and expanded upon them to conclude that no IT worker in any position with any company can quality as a "specialized knowledge" employee, irrespective of the facts of the specific petition."

Counsel explains that the petitioner is not an IT consulting company that develops solutions to solve internal client problems or develops software for use by its customers or its customer's clients. Counsel again notes that it the petitioner is unique among management consulting companies because it offers a more complete solution to assist its clients with rolling out new technologies, compared to other companies which offer fewer services. Counsel identifies its four largest competitors and explains how its services differ from those provided by each company.

Counsel also asserts that the director did not give proper weight to the Puleo memorandum in determining whether the instant beneficiary possesses specialized knowledge. Counsel notes that the above-referenced unpublished AAO decisions relied on the standards set forth in the Puleo memorandum, and therefore, the petitioner should be permitted to rely upon the same policy to determine the same issue. Counsel asserts that the petitioner submitted evidence to establish that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the market place; is uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions; and possesses knowledge which can be gained only through extensive prior experience with the employer.

Counsel contends that the beneficiary has been employed by the foreign entity almost since its inception and "not only has an advanced knowledge of [the petitioner's] internal processes, he has helped develop [the petitioner's] internal processes. Counsel, citing to *Matter of Penner*, 18 I&N Dec. 49, 53 (BIA 1982), asserts that "such knowledge demonstrates the beneficiary's ability to carry out a key process or function within [the company] which is essential to [the petitioner's] operations." Counsel states that the beneficiary's advanced knowledge is further evidenced by the petitioner's desire to utilize the beneficiary to train U.S. personnel, and notes that "the

knowledge of how to integrate IT solutions in the other four prongs of [the petitioner's] 4-prong process cannot be learned without working for [the petitioner]." Counsel asserts that "logic dictates that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace and that such knowledge can be gained only through extensive prior experience with the employer."

In addition, counsel contends that the director ignored the training aspect of the proposed intracompany transfer. Counsel asserts that the petitioner explained the need to cross train its personnel and the challenges the company would face if it could not do so. Counsel asserts that the beneficiary "has helped develop the 4-prong strategy that is the center of [the petitioner's] economic success," and that such experience "clearly qualifies the beneficiary to train [the petitioner's] U.S. personnel on how to integrate IT solutions and technology into a new product launch." Counsel contends that, as such, the beneficiary is "uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions."

Finally, counsel asserts that it would not be economically viable to train U.S. personnel for the beneficiary's position. Counsel explains that the petitioner has a formal training program for newly-hired IT professionals which is designed to ensure that a newly-hired IT professional "has a minimum competency in working with [the petitioner's] 4-prong strategy." Counsel indicates that the training consists of 522 hours of instruction which amounts to approximately 3.5 months of training "just to bring a new IT employee 'up to speed' so that they can start performing the services being provided by existing personnel." However, counsel emphasizes that a newly-trained employee would not be qualified to perform the training the petitioner wishes the beneficiary to provide to U.S. personnel. Counsel notes that one of the reasons the petitioner seeks to transfer the beneficiary is to allow the U.S. company to replicate the range of services provided in India, and contends that such a desire constitutes evidence that the petitioner would suffer economic disruption if it were necessary to hire someone else, and demonstrates that the beneficiary has advanced knowledge of the petitioner's processes and procedures.

Counsel asserts in conclusion that the evidence clearly demonstrates that the beneficiary possesses knowledge that sets him apart from the elementary or basic knowledge held by others within the petitioning organization, and as such qualifies for the requested L-1B classification.

In support of the appeal, the petitioner submits a copy of its "Learning Curriculum" for IT professionals, which is divided into three components. The "Fundamental" training encompasses 60 hours and includes 12 courses in technology standards and guidelines and "process and communications." The training includes 2 hours in internal company acronyms and two hours of training focused on the company's website/FTP site and knowledge base servers. The remainder of the fundamental training includes more general topics, such as understanding the phone and e-mail systems, timesheets, MS Office, Visio, MS Guidelines, MS Project Professional, and how to write white papers, use cases, architecture guides, guidance documents and installation documents. The "Comprehensive" component includes 10 hours of training in object oriented programming using C#; 27 hours of training in HTML, XHTML, CSS and Scripting Languages; 29 hours of training in XML; 40 hours of training in MS.NET and AJAX; 22 hours of training in RDBMS (SQL Server); 34 hours of training in MS SharePoint; and 42 hours of training in Project Planning and Resource Allocation.

Finally, the "Leading" component of the training includes 10 additional hours of training in object oriented programming; 28 hours of training in UML (Rational Rose/Visio); 46 additional hours of training in MS.Net and AJAX; 36 additional hours of training in RDBMX (SQL Server); 44 additional hours of training in MS Share

Point; 36 hours of training in Windows/Web Server; and 58 hours of training in System Analysis and Design, which involves, as a final project, creating a database in SQL Server and developing a web-based application.

Upon review, counsel's assertions are not persuasive. The petitioner has not established 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).

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).[3]

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.

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[3] 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.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *See* H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

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

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an

adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

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

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

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

The inherently subjective standard serves to make the L-1B classification more flexible and capable of responding to changing economic models. Depending on the facts of the specific case, a petitioner may put forward a novel argument that is based on the employer's specific situation. Or, as in the present case, a knowledgeable petitioner may choose to rely on aspects of the INS memoranda to frame his or her argument. Even though the Puleo memorandum does not constitute a binding legal "standard," it does describe possible attributes that would support a claim of specialized knowledge. However, the petitioner would be unwise to simply parrot the memorandum, without submitting supporting evidence, and expect USCIS to approve a petition. Or, as observed in the Puleo memorandum:

> . . . a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses

specialized knowledge.

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

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 for this claim. The beneficiary uses his knowledge of and skills with widely available computer and information technologies to "deliver software artifacts to satisfy customer requirements." While such duties may require him to become intimately familiar with the client's products in order to develop presentations, demos, prototypes, training materials, requirements documentation, and solution delivery frameworks for the client's latest technologies, the petitioner has failed to demonstrate that the beneficiary possesses, or that his duties require, any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced software consultants employed by the petitioning organization or in the industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 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's basic claims regarding the beneficiary's specialized knowledge are three-fold. First, the petitioner claims that its "four-prong strategy" is unique because its competitors do not offer the same combination of service offerings. Second, the petitioner claims that the beneficiary possesses advanced knowledge of the petitioner's processes due to his long tenure with the foreign entity. Finally, the petitioner states that the beneficiary possesses critical knowledge of Microsoft's Unified Communications Technology which is unique among the petitioner's consultants and not widely known in the industry.

With respect to the petitioner's "four-prong strategy," the petitioner highlights the fact that none of its major competitors offer the same range of services it provides, and emphasizes that it has developed "unique and proprietary" internal processes which give it a "unique ability to address a client's entire range of product development, marketing, and roll out capabilities in one turnkey location." Counsel indicated that the company's "unique process" allows it to understand a client's business situation and to design scalable solutions to assist technology companies in the rollout of new technologies." The AAO acknowledges the

argument that the petitioner may offer a particular *combination* of services that it is uncommon or even unique in the technology consulting market. However, the types of services the petitioner provides, i.e., strategic consulting, content preparation training, and pre-sales support for new technologies, are in fact provided by other consulting companies, while some technology companies would likely perform the same functions in-house.

The petitioner frequently refers to its proprietary and unique internal processes, but has failed to distinguish or explain its proprietary processes other than highlighting its "four-prong" strategy, and its business decision to bring together a "diverse talent pool," specializing in all aspects of marketing, sales and technology. Based on the information materials provided, it is evident that the petitioner's employees have defined roles within the four-prong strategy and work within their area of expertise to deliver the client's solutions. There is nothing in the record to suggest that the duties performed by individual employees within the process are significantly different from those who are similarly employed as consultants in the industry at large. Employment experience within a company that offers an unusual combination of services, without more, is insufficient to establish that any individual employee within the company possesses or is required to utilize specialized knowledge.

The petitioner's Learning Curriculum submitted on appeal further highlights that an IT consultant within the petitioning company is first and foremost required to possess certain technical knowledge and skills, none of which are specific to the petitioning company. The vast majority of the 3.5 months of training provided to the petitioner's IT professionals is focused on technologies that are commonly used by consultants in the field. The curriculum indicates that employees designated as "IT Professionals" receive two hours of training in company-specific acronyms, two hours of training in the petitioner's web site and knowledge base servers, and 42 hours of training in project planning and resource allocations, while the remaining 482 hours of training are in common web, database and Microsoft technologies. The petitioner has not explained how training in the "4-Prong strategy" is delivered within this framework.

Based on the foregoing discussion, the petitioner has not established that the knowledge of the petitioner's four-prong strategy can be considered "specialized knowledge." Overall, based on the petitioner's representations, its four-prong management process, while highly effective and valuable to the petitioner, can be readily learned on-the-job by employees who otherwise possess the requisite professional background in technical consulting. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

However, counsel further argues that the beneficiary's knowledge should be considered specialized because he possesses advanced knowledge of the company's processes and procedures, and even helped to develop the company's internal processes. In this regard, counsel argues that the director ignored the "training aspect" of the beneficiary's proposed assignment, and states that the petitioner's desire to have the beneficiary train its personnel is evidence of the beneficiary's advanced knowledge of the four-prong strategy.

The AAO notes that, at the time of filing, counsel had indicated that, generally, the petitioner's consultants are transferred to the United States to assist with projects for U.S. customers and to help cross-train the U.S. employees in processes and procedures used by the Indian subsidiary (and vice versa). Counsel stated that the beneficiary has an "advanced level of knowledge of the foreign entity's proprietary processes and procedures." This was the extent of the petitioner's claims regarding the beneficiary's proposed role as a trainer and with

respect to the beneficiary's "advanced knowledge." If the primary reason for the beneficiary's assignment were to train United States workers in the foreign entity's processes it is not clear why this aspect of the assignment was not discussed in more detail. The petitioner provided a lengthy list of job duties the beneficiary would perform, none of which appeared to relate to training the petitioner's own employees. Similarly, if the beneficiary did in fact assist in developing the 4-prong strategy that was discussed in such detail throughout the record, the AAO is left to question why the petitioner or counsel would not have mentioned this fact at the time the petition was filed, rather than just vaguely asserting that the beneficiary has "an advanced level of knowledge" of the process.

The AAO does not doubt that the beneficiary has been working with the petitioner's processes longer than some other employees within the organization, or that some cross-training will occur while he is in the United States. However, the AAO is not persuaded that the beneficiary played a significant role in developing the 4-prong strategy or that the primary purpose of his transfer is to provide training in this strategy to U.S. workers, as opposed to providing client services. These claims have been made for the first time on appeal and are not adequately supported by the evidence of record or any new evidence. The petitioner was given an opportunity when responding to the RFE to elaborate upon how the beneficiary's knowledge of the petitioner's processes and procedures is advanced, and to describe in detail any training he will provide while in the United States. In this regard, the petitioner stated the following:

> [The beneficiary] has worked on many US projects from India. As part of training, he is going to share the best practices on how to work with the global team for technology related projects.

If the director "ignored" the training aspect of the U.S. assignment, it was because the petitioner itself placed little emphasis on the relative importance of this part of the assignment. Instead, when responding to the RFE, the petitioner highlighted the beneficiary's experience with Unified Communications technologies as the factor which sets him apart from similarly employed workers within the organization. While the petitioner asserts that the U.S. and Indian offices do not have the exact same capabilities in terms of providing services within the 4-pronged management system, the evidence in the record suggests that the same processes have in fact been implemented company-wide. Absent some explanation regarding the knowledge gap that exists between U.S. personnel and Indian personnel with respect to the 4-prong process, the AAO cannot conclude that the U.S. assignment will require the beneficiary to provide training requiring advanced knowledge of the four-prong management system not possessed by other company employees.

The petitioner's final argument that the beneficiary possesses specialized knowledge is based on "his experience with and architectural knowledge of Microsoft Unified Communications Technology gained during multiple projects." Counsel indicated in response to the request for evidence that all of the petitioner's "Enterprise Technology Strategists" generally provide the same services to the petitioner's customers. Counsel stated that the Unified Communications technology is utilized by "high-end corporate accounts," and that it is "not a retail product that is readily utilized by companies that use Microsoft products to operate their businesses." Finally, counsel asserted that "any individual or company that can provide extensive expertise in this area is unique in the industry." The petitioner indicated that the beneficiary would provide some training to U.S. associates regarding Unified Communications Technologies, but it is not clear whether the beneficiary would be working in this domain with respect to client projects.

As noted above, in denying the petition, the director acknowledged the petitioner's claim that the beneficiary's experience with Unified Communications technologies is "unique in the industry" but determined: (1) that the

petitioner did not state that this knowledge is required to perform the proposed duties in the United States; and (2) that expertise in Microsoft technologies is not specific to the petitioning organization. On appeal, counsel makes no reference to the beneficiary's claimed specialized knowledge of Microsoft Unified Communications technologies.

Upon review, the petitioner's claim that knowledge of Microsoft's Unified Communications technologies is "unique" in the industry and that the beneficiary possesses such knowledge is not persuasive in establishing that the beneficiary possesses specialized knowledge. The record shows that the beneficiary has worked on at least one Unified Communications project while employed by the foreign entity. The record does not contain persuasive evidence to establish that knowledge of this technology is unique or scarce, either within the petitioning company or within the industry, or that it is not possessed by workers employed by Microsoft and other companies who work with Microsoft technologies. Even if the knowledge is relatively rare within the petitioning organization, the beneficiary's familiarity with its client's technologies, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that the beneficiary possesses specialized knowledge.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to a specific client project is not enough to establish the beneficiary as an employee possessing specialized knowledge. While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among a small subset of workers, (i.e., the only, or one of a few, technical resources who has worked on Microsoft Unified Communications projects) will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce.

It is appropriate for USCIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of LeBlanc*, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." However, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company. If all similarly employed workers within the petitioner's organization receive essentially the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced relative to a specific Microsoft technology are not persuasive, nor has the petitioner established that the beneficiary's knowledge of the foreign entity's operating processes and procedures is advanced compared to the remainder of the workforce. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's tools and processes for implementing projects. By this logic, any of them would qualify for L-1B classification if offered a position working on the same project in the United States.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself will not equal "special knowledge."[4] An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

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

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary

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

should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16.

Finally, regarding the petitioner's reliance, in part, on the Puleo memorandum, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that USCIS is bound to base its decision on the above-referenced memorandum, it is noted that the memorandum was issued as guidance to assist USCIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.[5]

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

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[5] USCIS memoranda articulate internal guidelines for agency personnel; they do not establish judicially enforceable standards. Agency interpretations that are not arrived at through precedent decision or notice-and-comment rulemaking - such as those in opinion letters, policy statements, agency manuals, and enforcement guidelines - lack the force of law and do not warrant *Chevron*-style deference. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir. 1987)). Agency policy memorandum and unpublished decisions do not confer substantive legal benefits upon aliens or bind CIS. *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1024 (9th Cir. 1985); *see also Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004).

In contrast to agency memoranda, a legacy INS or USCIS decision is binding as a precedent decision once it is published in accordance with 8 C.F.R. § 103.3(c). The INS precedent decisions relating to L-1B specialized knowledge are considered "interpretive rules" under the APA. *See Spencer Enterprises, Inc. v. U.S.*, 229 F.Supp.2d 1025, 1044 (E.D.Cal. 2001), *aff'd* 345 F.3d 683 (9th Cir. 2003); *see also R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp.2d 1014 (D.Hawaii 2000).