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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7

[redacted]

File: WAC 08 144 53304 Office: CALIFORNIA SERVICE CENTER Date: AUG 04 2009

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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 and 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 seeking 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 is an electrical and software engineering company providing services to the automotive industry. It states that it is the parent company of Automotive Robotics India Pvt. Ltd., located in India. The petitioner seeks to employ the beneficiary as a senior software engineer for a period of three years.

The director denied the petition on October 31, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been and would be employed in a capacity requiring specialized knowledge.[1]

On appeal, counsel asserts that the director applied criteria for specialized knowledge that are not derived from the statute, regulations or precedent case law. Counsel further contends that USCIS failed to consider key pieces of evidence submitted to establish the beneficiary's qualifications and the specialized nature of the position offered. Counsel submits a brief 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.

(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.

---

[1] The director initially denied the petition on June 12, 2008, concluding that the petitioner had failed to establish that it has a qualifying relationship with the foreign entity. The director granted the petitioner's Motion to Reopen filed on July 14, 2008.

(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.

Under section 101(a)(15)(L) of the Act, an alien is eligible for classification as a nonimmigrant if the alien, among other things, will be rendering services to the petitioning employer "in a capacity that is managerial, executive, or involves specialized knowledge." Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

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

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

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

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and that he has been and will be employed in a capacity requiring specialized knowledge.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 21, 2008. The petitioner indicated that the beneficiary has been employed by its Indian subsidiary since May 2007 and previously worked with the foreign entity's predecessor company from August 2004 until July 2006.

In a letter dated April 14, 2008, the petitioner indicated that the beneficiary has played a "crucial role" in the following projects:

- Protocol development and maintenance for various Caterpillar platforms
- Data logger and Reporting – also for Caterpillar
- 3500/3600 Basic Engines and Application Software for Caterpillar
- Rational Clear case Configuration Management

He has also used the following computer technologies, languages and environments:

- Languages: C, C++, Assembly Language, Perl
  Environment: Windows XP, Visual Studio 6.0, Code Wright, understand C++
- RTOS: VRTX32, pSOS

- Micro controllers: MC 68336, HC12
- Processor: Motorola PowerPC (MPC555)
- Control System Protocols: CAN, J1939, J1708, CDL (CAT proprietary)
- Compilers: Microtec, Diab compilers, Cosmic compiler, Renesas M32r
- Debuggers: Lauterback Trace32, SingleStep, UDE
- Client Specific Testing Tools: CADeT, ET, Canalyzer, INCA
- Version Control: Clear Case, VSS
- Quality Systems: SEI-CMMI

The petitioner further explained the beneficiary's qualifications as a specialized knowledge employee as follows:

> The culmination of [the beneficiary's] experiences with our predecessor in interest and current foreign office is not easy to learn and requires an in-depth knowledge of software engineering specifically tailored to our own products. [The beneficiary] has mastered our unique approach, which is a multidisciplinary and combinatory skills approach and is not, for example, that either a software engineer or computer programmer could perform without learning the focused, complementary skills and knowledge related to our trade secrecy and inside information. . . .
>
> . . . [the beneficiary] has shown remarkable progress and has made significant contributions to the development of our products concerning the application of the science of software engineering in the real world. We have occupied a leading position in the field, largely thanks to the efforts of experienced engineers like [the beneficiary]. He has already developed and implemented a number of very powerful new technologies for complex problems, which are not short of scientific significance.
>
> It would be very difficult to find an individual with equivalent credentials and expertise, and even more difficult, if not impossible, to bring that person up to date on the skills and knowledge [the beneficiary] developed during the course of his employment with our overseas office. Thus, he is an invaluable engineer at the forefront of the field. His proposed duties, therefore, require special knowledge beyond what is commonly held by ordinary engineers.

The petitioner indicated that the beneficiary's duties as a senior software engineer in the United States would include the following:

> Develop Boot, CAN drivers and Application Software using ANSI C for Embedded Environments
> - Use and customize real-time operating systems
> Implement control system protocols
> - Design Embedded Automotive Domain
> - Work on 16bit and 32bit Micro Controllers
> - Design, code, debug and analyze requirements

- Perform unit testing
- Perform Test Plan and Test Procedures Preparation
- Develop standards from data link layer to application layer
- Develop Basic J1030, Address arbitration, Transport protocol and preparatory PGN support
- Develop Flash protocol to flash Engine application into flash through CAN
- Develop system level test plan to test J1939, ATA
- Develop Client/Server mode of communication for broadcast messages
- Port software and update configurations
- Design output templates, coding and testing
- Analyze Histograms, Cumulative and Snapshot subsystems
- Develop system level test plans, test applications and test the functionality of the library
- Develop features in 3500 Industrial/OWS and 3600 LOCO applications
- Add Maintenance Indicators, Coolant Level and Speed Package in 3500 Industrial Applications
- Analyze complete basic engine features including Cold mode, Fuel systems, Emissions, Combustions and other feature support to develop system level test application
- Use the above-referenced languages, technologies and environments

The petitioner stated that the position requires "very unique and complex expertise in many aspects of software engineering since it is far more complex when it comes to the actual application and utilization." The petitioner further emphasized that the position requires "an individual with specialized knowledge in our current engineering software and optimization process," and someone who is "proficient in our unique, highly specialized skills that stem from our business with such high-profile companies as Caterpillar and others." The petitioner noted that its "core business is to provide innovative technology solutions and function as an engineering research and development (R&D) center for Caterpillar, Inc."

The petitioner stated that the beneficiary has "contributed to our professional and financial advancement to an extent that places him well ahead of his peers among our other employees," and possesses "flawless expertise in application of software engineering . . . not typically found in today's engineers." Finally the petitioner stated that the beneficiary occupies a "unique place" in the company and has been "uniquely trained" at its Indian office.

The director issued a request for additional evidence (RFE) on April 30, 2008, in which she requested, *inter alia*, additional evidence to establish that the beneficiary possesses specialized knowledge and has been and will be employed in a capacity requiring specialized knowledge. The director instructed the petitioner to: (1) explain how the duties the beneficiary performed abroad and those he will perform in the United States are different from those performed by other workers employed by the petitioner or other similarly employed-U.S. workers; and (2) explain how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field in comparison to that of others employed by the petitioner in this field. The director also requested additional

information regarding the number of persons holding the same or similar position in the United States offices, and information regarding any other nonimmigrant workers employed by the U.S. company.

In response to the director's request, the petitioner submitted a letter dated May 23, 2008, in which it further explained the beneficiary's specialized knowledge qualifications as follows:

> [The beneficiary] is working on Common Services & Datalink Libraries in the field of Automotive Applications. He has specialized knowledge in this area by working with us for the past few years and leading a team from our India facility. We are currently working on a prestigious project with Caterpillar creating virtual software models of electronic controllers that are used to control diesel engine emissions. This project will reduce Caterpillar's software development cycle for their electronic controls by 40%
>
> He was doing this role from our India facility where it is increasingly difficult to manage it without direct participation in the discussions & testing with the customer team here. As there is no other employee on our team here who has a focused experience in this area, he is needed at our United States facility to participate in meetings with our customers to perform demos on this project.
>
> * * *
>
> His experience working on various automotive protocols like CAN, J1939, J1708 & other proprietary datalinks makes him uniquely qualified for this position. His capabilities in understanding the customer's needs and understanding for implementation enable him to do an efficient job in making improvements for the project as well as performing efficient testing with the required equipment at our Peoria facility and our client's facility.

The petitioner submitted an organizational chart for the foreign entity, which indicates that the beneficiary is one of nine employees working in the "Common Services" area. The petitioner submitted an organizational chart for the U.S. office, but did not identify the beneficiary's proposed position, although it appears that his role would fall within the "outsourcing division." The petitioner indicated that it employs a total nine of foreign national employees with the job title "software engineer" as well as several others with similar job duties, including a lead engineer, software test engineers and a software developer. The majority of these employees have H-1B visas, and one has an L-1 visa.

As noted above, the director initially denied the petition on June 12, 2008 on the sole ground that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. The director subsequently reopened the matter and issued a second request for evidence September 4, 2008, in which he requested much of the same information previously requested with respect to the beneficiary's specialized knowledge qualifications. The director also requested evidence of the training the beneficiary will provide in the United States, if applicable. The director emphasized that the petitioner "is required to submit probative evidence to corroborate the statements made in its initial filing."

In a response dated October 6, 2008, the petitioner stated that the beneficiary is currently employed as a senior architect for the Common Service Team, and was previously employed in the roles of software engineer and senior programmer. The petitioner asserted that the beneficiary's years of experience with the company "has put him ahead of our other employees, not to mention other engineers," and that his "in-depth familiarity with our products, our business and our operations would be extremely difficult to replace." Further, the petitioner stated that it would take five years of training at the company's facilities to "bring an engineer up to speed on [the beneficiary's] current level of expertise." The petitioner stated that the beneficiary is currently involved in developing a data link library for New Generation Electronics for Caterpillar.

The petitioner further explained the beneficiary's role within the foreign entity's Common Services team as follows:

> The [petitioner's] Common Services team is a very specialized team with core expertise of automotive data link libraries and common libraries with customer specific architecture. In the Common Services team of nine engineers, [the beneficiary] has the highest level of experience, having worked in this team for more than three years. In his current role, he is leading the team with his expertise in delivering the customer's requirements. . . . With his extraordinary planning skills, people management and ability to convert the organization's vision into his team's goals, he is a special resource for the organization. Simply but, he is indispensable for our business. With all these capabilities – both technical and non-technical – we strongly believe that he would make a major difference when he starts working directly with our customers in some of the feasibility studies on New Generation Electronics.
>
> [The beneficiary's] unique capabilities of in-depth knowledge on Data link Software's like CAN & Caterpillar proprietary Data link makes him the only person to do this job of analyzing the data link support required for New Generation Electronics.

The petitioner also submitted a slightly expanded description of the beneficiary's proposed position in the United States, noting that, in addition to the duties already listed above, he will perform the following tasks:

- Analyze issues, understand requirements, designing, coding and debugging
- Perform maintenance and development of common software libraries
- Perform peer reviews
- Configure management support
- Utilize CAN, Basic J1939, Address arbitration, transport protocol and preparatory PGN support
- Assess budgetary estimates
- Perform onsite coordination
- Incorporate deliverables into the Caterpillar Software Configuration Management System (Clear-Case)
  Test plan execution with all tests "passing" per EC-2 requirements.

In support of the response, the petitioner submitted a chart indicating that the beneficiary has served as a primary or secondary trainer for 13 one- to three-hour practical training courses while employed by the foreign entity including: VOB Organization, CDL, J1939, CAN, Events & Diagnostics, CAT Issue List, Boot application architecture, Histograms, Snapshots, Cumulatives, BDT, test application architecture, and RDM overview. The training courses are identified as "General Training" and "Common Services Specific Training." The petitioner submitted a copy of a user guide for "Core Software Merge Process" authored by the beneficiary for new users on the petitioner's Core Software Development team. Per the document, "merging is a process used in clear case to integrate different versions of software developed into one branch." The petitioner also submitted training materials developed by the beneficiary for "Boot," an application program used to perform basic hardware initializations and for Flash programming, and for the J1939 Protocol.

The petitioner also submitted a copy of its Master Consulting Agreement entered with Caterpillar, Inc. in December 2007, and a copy of a Statement of Work/Supplier Proposal for Common Services and Datalink Development and Maintenance Support authored by the petitioner and Caterpillar, Inc. Pursuant to the terms of the proposal, the petitioner is responsible to assist the Caterpillar team to perform requirement feasibility study of datalink support on New Generation Electronics, and offshore support for various activities on specified platforms. The document indicates:

> Software updates will be developed according to the Caterpillar specified architecture, design, and Core software release processes, but supplier feedback on the architecture and design are welcome.
>
> Caterpillar will provide existing software, development software, and development hardware.
>
> 1.2 Supplier Deliverables
>
> The supplier shall provide all source code and documentation according to an agreed upon schedule defined in the schedule section of this document. Documentation shall consist of, but not be limited to design documentation, test plans, code inspection, and test results. The supplier is responsible for incorporating the deliverables into the Caterpillar Software Configuration Management System (Clear-case). On-site coordination, design, debugging and testing will be a necessity for this project.

The director denied the petition on October 31, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position requiring specialized knowledge. In denying the petition, the director determined that the duties to be performed have not been shown to require a specialized knowledge of the petitioning company's product, processes, or procedures that surpasses the ordinary. The director acknowledged the beneficiary's role as a trainer within the foreign entity, but noted that the subjects identified appear to be common in the automotive electronics industry and not specific to the petitioning company. The director acknowledged the petitioner's claim that the beneficiary is "irreplaceable" and vital to the success of the company, but found that the petitioner had not established the beneficiary's knowledge as more advanced than the knowledge possessed by other similarly trained and experienced persons employed by the petitioning organization or in the industry as a whole.

The director dismissed the petitioner's statement that it would not invest the time and money to obtain an L-1B visa for the beneficiary if he were not "irreplaceable," as "disingenuous" and further stated: "given that the beneficiary, is in fact, the son of the major stockholder in this case, time and money would not be significant obstacles to seeking L-1B status for him." The director's comments in this regard are both inappropriate and factually inaccurate and will be withdrawn. While the AAO agrees that the petitioner's claims regarding the beneficiary's specialized knowledge are not adequately supported by evidence, the AAO finds no basis to dismiss such claims as "disingenuous." There is nothing in the record to indicate that the beneficiary has a familial relationship with a shareholder of the petitioning company, and even if he did, such relationship would not have any relevancy to a determination regarding his specialized knowledge. The director should focus on applying the statute and regulations to the facts presented by the record of proceeding.

On appeal, counsel for the petitioner asserts that the director's conclusions were subjective, unsubstantiated by the statute and regulations, and unfair. Counsel contends that the director failed to consider key evidence submitted with regard to the beneficiary's qualifications and the "specialization" of the position sought. Counsel cites to the statutory and regulatory definitions of specialized knowledge and to a 1994 legacy Immigration and Naturalization Service (INS) memorandum which discusses the interpretation of specialized knowledge, noting that "the language of the forgoing regulations and memoranda is unambiguous and directly applicable to the beneficiary's qualifications and the position sought." *See* Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Special Knowledge" (March 9, 1994).

Specifically, counsel states:

> The Petitioner provided abundant evidence that it is a major supplier for Caterpillar, Inc., the well-known heavy machinery manufacturer. It provided a contract and contact information for the client. The Beneficiary had about four years of experience with the Petitioner (between the Petitioner and its predecessor in interest). The Petitioner also demonstrated through the size of both its Indian and U.S. operations the scope of its services and products and their unique nature, being specifically tailored to Caterpillar's needs. In none of its denials or RFE's did USCIS even cursorily mention this Caterpillar contract. . . . It is a valid contract, bearing signatures of both the Petitioner and Caterpillar, and clearly establishes the nature of the services to be provided.
>
> The length of the Beneficiary's experience with the Petitioner and the nature of his duties during those four years indicate that the Beneficiary is a far cry from a trainee, apprentice or even common employee. He worked at the Petitioner's site for four years and became intimately aware with its products, prompting his promotion to a Senior Engineer. The position also caters to the needs of a global, highly specialized client. To require more of the beneficiary or the position would simply be placing higher burden than the plain language of the regulations and binding cases require.

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

Standard for Specialized Knowledge

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).[2]

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

---

[2] 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.

Analysis

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 has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. While the petitioner has provided a detailed description of the beneficiary's duties, such duties are typical of a software engineer working with embedded systems in the automotive industry, and require him to use

industry-standard programming languages, tools and protocols.[3] The petitioner states that the position requires "very unique and complex expertise in many aspects of software engineering since it is far more complex when it comes to the actual application and utilization," the AAO notes that USCIS will compare the beneficiary's knowledge to that of other software engineers working in the same area of specialization, not to software engineers or programmers in general. The AAO does not doubt that the duties are highly technical or that the beneficiary possesses the knowledge required to perform the duties. The critical issue is whether the knowledge itself is specific to the petitioning organization and not general knowledge that is common among similarly employed workers in the industry. The claim that the knowledge required to perform the duties is "unique" is not supported by any evidence.

The AAO acknowledges that the beneficiary has been and would be working with some technologies that are not industry standards; however, the evidence of record indicates that such technologies are proprietary to Caterpillar, Inc., rather than proprietary to or specific to the petitioning company. For example, the project to which the beneficiary will be assigned that will utilize CDL is "Cat Data Link" a Caterpillar proprietary data link for on vehicle communications; CAT ET is "Caterpillar Electronic Technician," a "PC based service tool . . . used by dealer service technicians to service Caterpillar electronics engines and machines." The beneficiary would be developing software updates "according to the Caterpillar specified architecture, design and Core software release processes," and "incorporating the deliverables into the Caterpillar Software Configuration Management System (Clear-case), and all of his projects with the foreign entity, according to the petitioner's statements, have involved Caterpillar platforms and technologies. The petitioner did not explain how knowledge of an unaffiliated employer's proprietary products could be considered specialized knowledge related to the petitioner's organization. The beneficiary's familiarity with Caterpillar's technologies and requirements, while undoubtedly valuable to the petitioner in fulfilling its contractual obligations, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that the beneficiary possesses specialized knowledge.

The petitioner has also claimed that the beneficiary possesses, and the proffered position requires, "specialized knowledge in our current engineering software and optimization processes" and "in-depth knowledge of software engineering specifically tailored to our own products." The petitioner further claims that the beneficiary "has mastered our unique approach, which is a multidisciplinary and combinatory skills approach and is not, for example, that either a software engineer or computer programmer without learning the focused, complementary skills and knowledge related to our trade secrecy and inside information. . . ." However, the petitioner offered no further explanation, descriptions or evidence related to its own internal, company-specific engineering, software or optimization processes, products, or its "unique approach." In fact, the petitioner subsequently stated that its products are unique because they are "specifically tailored to Caterpillar's needs." As discussed, the only aspect of the beneficiary's knowledge and experience that has

[3] The above-referenced Statement of Work/Supplier Proposal includes a glossary of terms which provides more information regarding some of the technologies to be implemented for the client's project. For example, ATA is an "SAE data link for communications in engine applications; CAN is "an industry standard data link for on-vehicle communications"; CANalyzer is a tool for developing CAN-based data link communications; dSpace is a commercially available software tester; ECM is an "electronic computer which stores/displays information or controls the function of an engine; J1939 is an SAE standard CAN-based communication protocol.

been described in detail is that which relates to common industry standards and protocols and that which is related to Caterpillar's proprietary interests. 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. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Even assuming, *arguendo,* that knowledge of the petitioner's proprietary tools, processes and methodologies is required to perform the proposed job duties and that the beneficiary has such knowledge, the AAO must determine whether knowledge of and experience with the petitioner's proprietary tools, processes and methodologies alone constitutes specialized knowledge. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification.

Reviewing the precedent decisions that preceded the Immigration Act of 1990, there are a number of conclusions that were not based on the superseded regulatory definition, and therefore continue to apply to the adjudication of L-1B specialized knowledge petitions. In 1981, the INS recognized that "[t]he modern workplace requires a high proportion of technicians and specialists." The agency concluded that:

> Most employees today are specialists and have been trained and given specialized knowledge. However, in view of the [legislative history], it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees. The House Report indicates the employee must be a "key" person and associates this employee with "managerial personnel."

Matter of Colley, 18 I&N Dec. at 119-20.

In a subsequent decision, the INS looked to the legislative history of the 1970 Act and concluded that a "broad definition which would include skilled workers and technicians was not discussed, thus the limited legislative history available therefore indicates that an expansive reading of the 'specialized knowledge' provision is not warranted." *Matter of Penner*, 18 I&N Dec. at 51. The decision continued:

> [I]n view of the House Report, it cannot be concluded that all employees with any level of specialized knowledge or performing highly technical duties are eligible for classification as intra-company transferees. Such a conclusion would permit extremely large numbers of persons to qualify for the "L-1" visa. The House Report indicates that the employee must be a "key" person and "the numbers will not be large."

Id. at 53.

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." USCIS must interpret specialized knowledge to require more than fundamental job skills or a short period of experience. 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 the L-1B classification.

The proprietary or company-specific specialized knowledge in this matter is stated to include engineering, software and optimization processes that constitute a "unique approach" to automotive software and systems development projects. As noted above, the nature of such processes has not been explained. However, it is noted that consulting firms typically develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. The petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other engineering companies who have also adopted and customized standard software development practices. The petitioner has not specified the amount or type of training its technical staff members receive in the company's processes, tools or procedures and therefore it cannot be concluded that such processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an automotive industry-trained software engineer who had no prior experience with the petitioner's family of companies. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

To the contrary, when the petitioner was asked to distinguish the beneficiary's training from that of similarly employed workers within the company and in the industry at large, it highlighted the beneficiary's educational qualifications, domain knowledge, expertise in industry-standard technologies, and functional knowledge of Caterpillar's products and technologies. The petitioner has claimed that the beneficiary is "at the forefront of the field," that he has implemented a number of scientifically significant "powerful new technologies," and that he has contributed to the petitioner's professional and financial advancement "to an extent that places him well ahead of his peers among our other employees." The petitioner also refers to the beneficiary as a "crucial asset" who occupies a "unique place" within the company. While these statements certainly establish that the beneficiary is regarded as a highly valued employee, they do not offer any further insight into his specialized or advanced knowledge of the petitioner's products, processes or other interests or otherwise establish his qualifications as an employee with specialized knowledge. The petitioner has not indicated what it is that makes the beneficiary "unique" among its employees or provided evidence of his contributions to the development of new technologies. The record does show that the beneficiary serves as a trainer for the foreign entity, but he is one of eleven trainers included on the list provided and his appointment as such does not appear to indicate an elevated stature among the petitioner's technical staff. Many of the beneficiary's "Common Services" team members also serve as trainers. Furthermore, the training he provides appears to be on industry standard protocols, tools and technologies, rather than on any processes or technologies that are specific to the foreign entity.

Further, the petitioner has stated that it would take five years of training at the company's facilities "to bring an engineer up to speed on [the beneficiary's] current level of expertise." The AAO notes that the beneficiary himself had slightly less than three years of experience with the foreign entity and its claimed predecessor-in-interest at the time the instant petition was filed, and only one year of this experience was in the position of software engineer. Given the beneficiary's own credentials, the petitioner's statement that it would require five years to train a similarly educated engineer to the beneficiary's same level of expertise tests the limits of credulity. Furthermore, based on the list of F-1 and H-1B workers in the petitioner's employ and their job titles, it is evident that the petitioner routinely hires software engineers and even senior and lead engineers, directly from the general labor market to work on its projects in the United States.

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 his approximately three years of 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 client are unpersuasive. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's internal 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. All employees can be said to possess unique skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced engineer is not "specialized knowledge." The petitioner must establish that qualities of the processes, procedures, and technologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

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. On the other hand, the beneficiary will not be considered to have specialized knowledge simply because he has three years of work experience with the foreign entity. Again, 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.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced 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 engineers employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among software engineers in the automotive field, and knowledge that is proprietary to the petitioner's main client. 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 should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. Accordingly, the appeal will be dismissed.

---

[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).

Beyond the decision of the director, the AAO finds that the record as presently constituted does not establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner stated on Form I-129 that the U.S. company is the parent company of Automotive Robotics (India) Pvt. Ltd. In support of the petition, the petitioner submitted copies of the certificate of incorporation, articles of association and memorandum of association for the foreign entity, which was established in India in April 2007. According to the memorandum of association, the foreign entity is owned by [redacted] (9999 shares) and [redacted] (1 share).

On April 30, 2008, the director issued an RFE requested additional evidence to establish that the U.S. and foreign entities have a qualifying relationship, and specifically requested additional evidence to establish the ownership of the U.S. company.

In response to the RFE, counsel for the petitioner stated that "the Petitioner maintains a company [sic] with the foreign Indian-based company both through contractual agreements and also via its predessor-in-interest (IndusRad, Inc.)." In support of these claims, the petitioner submitted a copy of its 2007 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, which identifies [redacted] as the petitioner's sole shareholder. The petitioner also submitted copies of invoices issued by the foreign entity to the petitioner and evidence of wire transfers the petitioner made in favor of the foreign entity.

The director initially denied the petition on June 12, 2008, concluding that the petitioner did not establish that it has a qualifying relationship with the foreign entity. The director acknowledged the claimed parent-subsidiary relationship between the petitioner and foreign entity, but noted that the foreign entity, according to the evidence of record, is majority owned by [redacted] and not by the petitioner.

On motion to reopen, counsel for the petitioner asserted that [redacted] transferred his shares to his son, [redacted], on February 6, 2008, and therefore the companies have an affiliate relationship based on common ownership and control by [redacted] The petitioner submitted for the first time on appeal the extracts of the minutes of a meeting of the board of directors of the foreign entity held on February 6, 2008, which indicates that the board approved the transfer of certificate number 1 for 9990 shares from [redacted] to [redacted] on that date.

As noted above, the director reopened the matter and did not further address the issue of the petitioner's qualifying relationship with the foreign entity in the subsequent RFE or notice of denial. Upon review, the AAO finds the evidence submitted insufficient to establish that the petitioner and the foreign entity have a qualifying relationship. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or

indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Prior to the initial denial of the petition, the petitioner did not specifically claim to have a qualifying relationship based on ownership and control. Rather, the petitioner claimed to have a qualifying relationship through "contractual agreements" and through its predecessor-in-interest relationship, which will be discussed further below. If both companies were in fact owned and controlled by [redacted] at the time the petition was filed, it is unclear why the petitioner did not provide evidence of such common ownership or articulate the affiliate relationship at the time of filing. The petitioner did not submit the minutes of the foreign entity's February 6, 2008 meeting at the time of filing or in response to the RFE. Rather, the petitioner focused on providing evidence that the two companies have a business relationship and provided agreements entered into by the petitioner's predecessor companies, evidence that was not requested by the director and is not relevant to a determination of the ownership and control of the U.S. and foreign entities. If the petitioner had direct evidence that the petitioner and the foreign entity have a common majority shareholder, then it is reasonable to believe that it would have submitted such evidence either at the time of filing or in response to the RFE.

Furthermore, there is an inconsistency in the record with respect to the number of shares in the foreign entity owned by [redacted]. The memorandum of association for the foreign entity indicates that he holds 9999 shares, while the resolution addressing the transfer of those shares to his [redacted] indicates that he holds 9990 shares. Furthermore, petitioner has not submitted any additional documentary evidence with respect to the transfer of shares, such as copies of stock certificates, the foreign entity's share transfer ledger, or amendments to the foreign entity's memorandum of association. In light of the petitioner's earlier omissions and the inconsistency noted, the AAO is not persuaded that [redacted] owned both the foreign and U.S. companies at the time of filing.

The other issue to be addressed surrounds the petitioner's claim to be the successor-in-interest of another U.S. company, IndusRAD, Inc., which in turn is claimed to have a qualifying relationship with the foreign entity's alleged predecessor-in-interest, Indus Research and Development, Ltd. These relationships are critical because, at the time the petition was filed, the beneficiary had been employed by Automatic Robotics (India) Pvt. Ltd. for less than one year, from May 2, 2007 until April 21, 2008. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) requires the petitioner to submit 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. The beneficiary was previously employed by Indus Research and Development Pvt. Ltd. from August 2004 until July 2006. Therefore, the beneficiary's one year of continuous employment with a foreign entity occurred during this time period.

The petitioner, an Illinois corporation established in December 2006, describes itself as a "spin-off" from IndusRAD, Inc., a Delaware corporation established in 1998. The petitioner submitted a "Business Transfer Agreement and Assignment" dated January 1, 2007 between IndusRAD, Inc., the petitioner, [redacted] Indus Research and Development Ltd., and IRAD Systems, Inc., in which IndusRAD agreed to assign the Caterpillar, Inc. master consulting agreement and all derivative statements of work to the petitioner in exchange for $500,000 and [redacted] resignation of his position as president of IndusRAD. IndusRAD also agreed to assign and transfer "employees and consultants related to Caterpillar work" to the petitioning

company, and stated that it would "encourage" its employees to become employees of the petitioning company. The agreement also indicates the petitioner's intention to incorporate an Indian subsidiary and states that Indus R&D Ltd. would transfer its employees related to Caterpillar work to the new Indian company. The petitioner subsequently submitted: (1) copies of invoices issued by Indus Research and Development Ltd. to IndusRAD, Inc. for work performed in India in 2005 and 2006 and evidence of wire transfers made by IndusRAD to Indus Research and Development Ltd.; and (2) a copy of a memorandum of understanding between Indus Research & Development Pvt. Ltd. and IndusRad Inc., dated February 7, 2000, wherein the Indian company agrees to provide offshore development services on an as-needed basis as an independent vendor.

Based on this minimal evidence, it cannot be concluded that the petitioner has a qualifying relationship with the foreign entity that employed the beneficiary for one continuous year during the three years preceding the filing of the petition, i.e., Indus Research & Development Pvt. Ltd. There is no evidence of a qualifying corporate relationship based on common ownership and control between this Indian company and the petitioner's claimed predecessor company, IndusRAD, Inc., or any evidence of common ownership and control between the petitioner and Indus Research & Development Ltd. While a "successor-in-interest" relationship claim of this type may be valid in some immigration contexts, the L-1 statute and regulations clearly require that the petitioner establish that it is the parent, subsidiary, affiliate or branch of the entity that employed the beneficiary during his or her one year of qualifying employment abroad.

Based on the foregoing discussion, the petitioner has not established that it has a qualifying relationship with the beneficiary's current or previous foreign employer. For this additional reason, the petition will be denied.

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. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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

ORDER: The appeal is dismissed.