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U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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File: WAC 08 248 50834 Office: CALIFORNIA SERVICE CENTER Date: **AUG 07 2009**

IN RE: Petitioner: [redacted]
Beneficiary:

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

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. 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, a California corporation, develops information management solutions for the healthcare industry. It seeks to employ the beneficiary as an implementation 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.

On appeal, counsel for the petitioner asserts that the director applied an inappropriate legal standard in determining that the beneficiary's current and proffered positions do not require specialized knowledge. Specifically, counsel asserts that the director determined "that a beneficiary can only have specialized knowledge if he created the knowledge." Counsel asserts that the standard applied is "impossibly high" and contradicts precedent case law pertaining to specialized knowledge employees. Counsel submits a brief and additional 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.

(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 petition on September 18, 2008. In a letter dated September 12, 2008, the petitioner indicated that the beneficiary has been employed by its foreign subsidiary since April 2007 in the position of Client Services Manager / Offsite Implementor, where he specializes in implementations of the petitioner's Intelligent Medical Software (IMS) line, specifically, the IMS billing module. The petitioner stated that IMS is a proprietary product line launched eight years ago in India, which includes modules to assist physicians in automating all aspects of their medical practices.

The petitioner stated that the beneficiary's duties as Client Services Manager include the following:

> [The beneficiary] is responsible for implementation of the billing module software at client sites; to train clients and provide support in order to solve any issues with the product; and to assist clients with respect to use of software to manage accounts receivable, collections and rejections of medical claims. He has managed remote implementations as well as on site implementations. During and after the implementation process, he leads a team which is responsible to train clients on billing modules of the IMS software. The training includes how the modules function and how effectively the client can use and modify the billing modules per their operational requirements. Once the client goes live with the IMS product, if they face any functional or technical issues with Billing modules, he is responsible to provide technical support and software solutions.
>
> The beneficiary is also involved in development of the software modules. While he does not do any software coding, he gathers user requirements and works with programmers to ensure that each piece of software is modified according to customer requirements. Because of his pervious

> [*sic*] billing experience and expertise in Anesthesia, he has helped to design many billing modules per customer requirements and according to his knowledge of industry standards. [The beneficiary's] knowledge is specialized not only in the wider marketplace, due to his experience with our proprietary products and techniques, but also within [the petitioner]. Of our 71 employees in India, he is one of only 2 personnel who possess the knowledge required to perform his job duties. Of the 20 employees currently in the U.S., there is currently only 1 person in the U.S. who possesses this specialized knowledge.

The petitioner explained that the beneficiary currently provides remote training and support for existing U.S. clients from India, and noted that it seeks his transfer to the United States to provide on-site visits for larger IMS customers who seek to implement the IMS billing module. The petitioner described the beneficiary's proposed role in the U.S. company as the following:

> His job title will be Implementation Consultant, and he will be responsible for on-site training for medical billing to billing companies, and to work side by side with users to implement enterprise billing for billing companies. He will apply his specialized knowledge of [the petitioner's] proprietary IMS product line and particularly its billing module, which he was involved in creating and modifying in India. He will continue to gather user requirements on site which will be used to further refine its functionality. [The beneficiary's] involvement in modifying the technical aspects of our proprietary product's functionality to meet user needs has give [*sic*] him in-depth knowledge of our unique product line which it would not be economically feasible to impart to another [company] employee in the U.S. without extended training and expense.

Finally, the petitioner described the beneficiary's qualifications as the following:

> Based on her [*sic*] experience with [the petitioner], wherein he has acquired and exercised specialized knowledge of proprietary [company] software packages and their applications in international markets, [the beneficiary] is well-qualified for the position of Implementation Consultant in the United States. In addition, he possesses a B.S. degree in Analytical Chemistry and an MBA in Marketing & Human Resources from Bangalore University, India. Further, prior to working for [the foreign entity] he worked as a Junior Manager in Accounts Receivable/Quality Control for Business Solutions Pvt. Ltd. in India which gave him billing experience.

In support of the petition, the petitioner provided additional product and company information from its company website. According to the information submitted, the petitioner builds its medical practice solutions on "out-of-the-box, standard, open technology." The petitioner also submitted organizational charts depicting the staffing structure of the U.S. and Indian entity. The U.S. company employs five implementation project managers. The beneficiary is depicted as one of six offsite implementers reporting to an implementation team leader in India.

On September 23, 2008, the director requested additional evidence, including, *inter alia*: a more detailed description of the beneficiary's duties in the United States and abroad; an explanation addressing how the beneficiary's duties in the U.S. abroad are special or advanced compared to those of other workers employed by the petitioner or other U.S. employers in the same type of position; descriptions of the beneficiary's role in any

specific projects abroad and the results achieved; an explanation as to how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in his field of endeavor in comparison to similarly employed workers in the petitioning organization; and a detailed description of the training which the beneficiary will provide to other workers in the United States.

The director further requested that the petitioner explain exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge and indicate whether it is used by other employers in the United States and abroad. The director advised that the petitioner's assertions regarding the beneficiary's claimed specialized knowledge must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

In a letter dated November 14, 2008, the petitioner provided the following response to the director's request for a more detailed description of the beneficiary's duties abroad:

- Dealing with U.S. clients with respect to any issues related to [the petitioner's] IMS software line, either technical or functional;
- Design and modification of aspects of IMS billing module;
- Leading a team of implementation for initial set up with respect to client's Medical Billing modules of [petitioner's] software;
- Assisting clients with respect to billing-related software issues including Accounts Receivable, Collections and rejections of their medical claims;
- Training new clients remotely for various Medical Billing Modules of the software;
- Handling support related issues with respect to Medical software, including Medical billing issues, scheduler, Check-in and EMR[.]

The petitioner reiterated that the beneficiary has been involved in remote implementation, training and customer support for existing and new clients, but noted that the petitioner now has larger clients requiring on-site visits from implementation consultants who possess expertise in IMS billing modules.

With respect to the beneficiary's qualifications, the petitioner stated that the beneficiary "obtained the foundation for his specialized knowledge through formal education, including a[n] M.B.A., which helps him to handle Project Management." The petitioner also highlighted the beneficiary's more than two years of work experience for a U.S.-based medical billing company, where "he gained valuable medical billing experience that assists him in understanding [the petitioner's] client companies' needs" and "makes him more adept at creating effective solutions for functional queries with his domain knowledge."

The petitioner further stated:

> In addition to his prior experience, [the beneficiary] has been working with the company's proprietary IMS billing modules for the past year and a half and has been instrumental in creating and modifying these modules. [The beneficiary's] unique combination of first-hand, in-depth knowledge of [the petitioner's] proprietary IMS billing modules plus his understanding of user needs through prior industry experience dealing with medical billing makes him a unique asset to the company. There are no other employees in [the foreign entity] or the U.S. who

> possess his unique industry experience with medical billing; and there are no other individuals outside of [the petitioning organization] in India or the U.S. who understand the company's proprietary software, particularly not at the level of [the beneficiary] who helped to create the billing modules. It would require at least a year of training before a qualified, outside individual would be able to perform the duties of Implementation Consultant on the IMS billing module, at significant expense to the company given that [the beneficiary] is perfectly suited to the task.

The petitioner provided additional explanation regarding the IMS billing modules, with which the beneficiary is claimed to have "unique experience." The petitioner notes that "the module is designed to increase cash flow for medical practitioners by reducing error and the time spent processing individual claims." The petitioner further stated:

> Because the IMS billing module is designed to manage the billing aspect of medical practices, it is vital that [the petitioner] understand the business practices of medical billers; it is in this respect that [the beneficiary's] prior experience with medical billing was vital to the company's, and [the beneficiary's], successful design of the IMS billing module.
>
> [The beneficiary] works in India as part of the IMS implementation team and is specifically responsible for modifications to the IMS billing module as well as implementation and customer training on this piece of the IMS package. His specialized knowledge is in this specific module, including its modification, implementation and associated client training. IMS products are proprietary to [the petitioner] and are protected by restricted source code access. They are not produced by companies other than [the petitioner] and are only used by [the petitioner's] clients who purchase permission to use them.

The petitioner stated that "[b]ecause of [the beneficiary's] domain knowledge in US Medical Billing and past experience, he has helped many of our required clients for their collections and A/R, which had in turn become a value added service to our company. All IMS Billing Module training for all the our [*sic*] new and existing client [*sic*] is being done from India by [the beneficiary]."

The petitioner submitted a copy of a contract and work order for a client with which the petitioner has contracted for the sale, implementation and user privileges on a "uniquely modified IMS product package." The petitioner stated that the beneficiary will be responsible for the billing module portion of the implementation, training and customer support. The petitioner further described his proposed role as follows:

> [The beneficiary] will work with the customer to train them in the use of the IMS billing module. This involves learning the customer's business model as well as technical requirements so that he can teach them the correct manner of using the software for optimal business efficiency. His job duties will continue to be the same as those outlined above for his position in India, except that the implementation and training will occur onsite at the client location.
>
> We have made some changes in the software to make it more user friendly for Billing Services thus we were able to get more Billing Services contracts. We have already got contracts from 2-3 billing services signed and many more on its way. Billing Services wants somebody on-site to

> help them do their day-to-day work with our software and start doing billing for more and more clients using user software. Since [the beneficiary] understands this process better than anyone in the company, he is needed to help train the customers here in the USA.

The director denied the petition on December 2, 2008, concluding that the petitioner had not established that the beneficiary has been or would be employed in a capacity requiring specialized knowledge. The director noted that "on-the-job training to acquire knowledge of tools, procedures, and methodologies does not automatically qualify as specialized knowledge," and emphasized that job-related training at any company will provide employees with knowledge of procedures that are relevant to the organization. The director found insufficient evidence that the beneficiary had received any "highly skilled training," that he performs skills "that cannot be taught," or that he performs duties that require the application of specialized knowledge of the company's product, processes or procedures that surpasses the ordinary knowledge of an implementation consultant. Rather, the director determined that the beneficiary's duties with the foreign entity appear to be those of a skilled worker, requiring knowledge which is common in the field and among the petitioner's employees. In discussing whether the beneficiary is required to utilize specialized knowledge in the performance of his duties, the director stated:

> The employee who develops and/or writes the tool, procedure, methodology, and/or program would obtain "specialized knowledge" of the program that others could not possess. Likewise, the employee who merely performs low level and common routine maintenance and/or use of tools, procedures methodologies, and/or programs, proprietary or otherwise would not be engaged in "specialized knowledge."
>
> In addition, others such as experienced trainers would also possess a higher level of knowledge of the processes and procedures than that of a trainee or user of a program. Further, while individual users in the past may have qualified as specialized during the introduction of a new procedure or process, it is reasonable to expect other employees would be trained and the knowledge would no longer qualify as Specialized Knowledge.

The director acknowledged the petitioner's claim that the beneficiary is involved in the development of software modules, but found that the petitioner provided no substantive evidence demonstrating that he has played a major role in such development. The director further stated that "the fact that the petitioner has only a small number of employees with these skills is not dispositive. A scarce skill does not necessarily establish that the skill derives from specialized knowledge." The director concluded that the petitioner did not demonstrate that the beneficiary's knowledge is advanced relative to the industry at large or to the rest of its workforce.

On appeal, counsel for the petitioner asserts that the director applied an inappropriately stringent standard by requiring "that the beneficiary must have been instrumental in creating the petitioner's products," and by requiring that the beneficiary possess skills or knowledge that "cannot be taught." Counsel asserts that the beneficiary's position in India involves specialized knowledge of the IMS product, specifically, the billing module and that the beneficiary "possesses unusual knowledge of the product's application in international markets, based on his unique combination of prior industry experience in medical billing and direct experience with IMS software."

Counsel further asserts:

> [The beneficiary] is the liaison between the customer and [the petitioner] with regard to the IMS billing module, and the modifications he has suggested to the module, which have been implemented by [the petitioner's] programmers, show unique insight which has made the IMS billing module more successful in the marketplace. . . . It is precisely [the beneficiary's] knowledge of the industry to which he is providing software consulting services – in addition to his understanding of [the petitioner's] proprietary software – that makes him so specialized.

In support of the appeal, the petitioner submits letters from a number of the petitioner's customers who have worked with the beneficiary in implementing the petitioner's IMS billing software. Counsel states that the statements of the customers attest to "the beneficiary's ability to analyze their workflow and recommend appropriate software solutions in the IMS billing system as well as to train their employees." [redacted], vice president of AIM Services, Inc. states that the beneficiary possesses "a unique detailed understanding of the functionality of the software program and of medical billing," while [redacted] of Bay Area Pain and Wellness Center states that the beneficiary's "prior experience as a biller and his specialized knowledge of billing as well as IMS helps us to successfully implement and effectively use the IMS software." Counsel asserts that the customers' letters "demonstrate the unique contribution that [the beneficiary] makes to the business of [the petitioner's] customers because he understands the medical billing industry in addition to [the petitioner's] proprietary IMS billing module."

Counsel further asserts that the beneficiary "fits the prototype" of an employee possessing specialized knowledge as outlined in a 1994 legacy Immigration and Naturalization Service (INS) memorandum from James A. Puleo.[1] Counsel notes that such "specialized knowledge" prototype includes: employees who possess knowledge valuable to the employer's competitiveness in the marketplace; employees who possess knowledge which, normally, can be gained only through prior experience with that employer; and employees who possess knowledge of a product or process which cannot be easily transferred or taught to another individual.

In this regard, counsel states:

> [The petitioner] manufactures proprietary medical practice management software, including a billing module in which [the beneficiary] specializes. While there may be other medical practice management software, this is an emergent field in the U.S. due to restrictions that have been placed on medical records storage under HIPPA [*sic*]. [The petitioner's] software is not patented but has been developed exclusively in-house and is protected by technical rather than legal means, through a restricted code access. In other words, the petitioner manufactures a unique product with which [the beneficiary] has well over the minimally required one year of experience. [The beneficiary] also possesses a unique combination of prior experience in the medical billing industry, to which the software is marketed, and in-depth experience with the proprietary IMS billing module. . . . It would be difficult to find someone else who possesses this unusual knowledge. Indeed, he was able to more quickly pick up the job responsibilities because of his prior experience in the industry.

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

Counsel acknowledges that there are workers outside the petitioning organization who possess the knowledge required to implement software. However, counsel indicates that, due to the petitioner's niche industry and specialized products, "the position requires someone who possesses skills and knowledge beyond what the job classification would indicate." Counsel further explains:

> The U.S. company needs the services of someone who is familiar with both their unique software and with the medical billing industry. This knowledge cannot easily be transferred or taught to another individual: part of the essential knowledge for the position is knowledge of the proprietary software, which would require several months to impart; and the other essential knowledge, necessary to successful application of the IMS billing module in international markets, is knowledge of the medical billing industry. Knowledge of this industry is not something [the petitioner] can quickly impart to an employee who does not have prior experience in the industry. It would take years of work to acquire the knowledge of the industry that [the beneficiary] gained more quickly through prior industry experience.

Counsel contends that the beneficiary's knowledge of the IMS billing module and its application in the medical billing industry is highly specialized and that the director's finding to the contrary is erroneous. Counsel states that "while it is true that knowledge of a petitioner's proprietary products, on its own, is insufficient to determine whether an individual employee possesses specialized knowledge, it is nevertheless a relevant factor." Counsel further asserts that the petitioner has established that the beneficiary is "a key employee in that he is the only employee with his unique experience in the medical billing industry, in addition to experience with the proprietary product line; and thus possesses unique expertise in the IMS billing module and its application in the marketplace."

Counsel notes the director's statement that "specialized knowledge is generally a by-product of projects and activities rather than knowledge that can be learned through a training program." Counsel emphasizes that the beneficiary "did not go through any formalized classroom training to acquire his knowledge of the IMS billing module, but in fact learned about it through the projects to which he was assigned."

Counsel asserts that the director also "seems to be applying the standard that only those workers who are instrumental in creating an organization's proprietary products, or perhaps those who are experience trainers in the use of proprietary technology, possess specialized knowledge. Counsel asserts that this is "a far higher standard than what the statute, regulations, case law and agency memos require." Counsel discusses the facts of several precedent decisions involving beneficiaries found to possess specialized knowledge, noting that the beneficiaries in the cited cases were not instrumental to the creation of a proprietary product. Counsel contends that the beneficiary "possesses unusual knowledge of how to leverage [the petitioner's] proprietary IMS billing module in the marketplace due to his unique combination of experience in both the medical billing industry and in implementing [the petitioner's] proprietary products in India."

Counsel further objects to the director's assertion that the beneficiary's skills "do not appear to be skills that cannot be taught," arguing that a more reasonable standard would be a requirement that the beneficiary possess knowledge of a product or process "which cannot be easily transferred or taught to another individual." Counsel asserts that "it would require months of training for an individual hired with only the minimum requirements for the job classification to come up to minimal competence in the petitioner's

proprietary products, and even with that training, it would take many months more before a new hire, without prior experience in the medical billing industry, would attain [the beneficiary's] level of understanding of how to leverage [the petitioner's] products in the marketplace."

Counsel emphasizes that key employees should not be limited to employees who create proprietary products for the company, but rather should include "not only those with advanced knowledge of the company's products and procedures, but also those with special knowledge of the company's products and their application in international markets." Counsel asserts that the beneficiary "possesses specialized knowledge not because he created the IMS billing module, but because his experience with that proprietary software, combined with his prior industry experience, uniquely positions him to act as a liaison between the customer purchasing [the petitioner's] proprietary software packages, and the programmers at [the petitioner] who require instruction to configure the modules to meet the specific customer's needs."

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).

The 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)).

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[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.

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 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.

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The decision of the director will be affirmed as it relates to this issue and the appeal will be dismissed.

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.

The petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge, specific to the petitioning organization, which would distinguish the beneficiary's role from that of other similarly experienced consultants employed by the petitioning organization or in the industry at-large. Rather, the petitioner indicates that the beneficiary is successful in his role, in large part, due to his university education and his more than two years of experience in the medical billing industry. While the AAO does not doubt that the beneficiary's previous work experience and formal education are valuable, possession of an M.B.A. or work experience with an unrelated employer cannot form the foundation of a claim that the beneficiary possesses specialized knowledge specific to the petitioning organization. The beneficiary's familiarity with and experience in the medical billing industry must be considered general knowledge, however uncommon the petitioner claims such experience may be among its own personnel.

The petitioner further claims that, in addition to his professional experience and formal education, the beneficiary's specialized knowledge is derived from his 16 months of experience as a client services manager/offsite implementer with the petitioner's foreign subsidiary, during which time he has gained specialized knowledge of the petitioner's proprietary IMS software, and specifically, the IMS billing module. The petitioner acknowledges that there are other medical practice software products on the market, but emphasizes that its product is developed in-house. The petitioner also stresses that it is competing in an emergent field, perhaps in an effort to establish that familiarity with medical practice software in general is relatively rare. However, the petitioner provided no other explanation regarding how its software differs from "other medical practice software products on the market." The product itself appears to be built on "out-of-the-box, standard open technologies."

Therefore, the AAO must determine whether knowledge of and experience with the petitioner's proprietary product 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 beneficiary's proprietary or company-specific specialized knowledge in this matter is stated to include his knowledge of the billing module of the petitioner's IMS product. Specifically, the beneficiary's role is to provide training and support to clients so that they can learn to effectively use and modify the billing modules to meet their operational requirements, and to provide post-training technical support and functional solutions. The beneficiary also gathers user requirements and works with programmers to ensure that the software is modified according to customer requirements. As noted by the director, the petitioner also claims that the beneficiary has been involved in the development of software modules, but has not clearly explained the

extent of his role in such activities. It appears that he makes suggestions to technical staff to improve the functionality of the product based on customer needs and feedback. While counsel correctly states on appeal that the beneficiary need not have designed the petitioner's product in order to possess specialized knowledge, the petitioner did in fact claim "that [the beneficiary's] prior experience with medical billing was vital to the company's, and [the beneficiary's], successful design of the IMS billing module." It was reasonable for the director to question the beneficiary's role in the product's development in light of the petitioner's statements. The claim that the beneficiary actually designed the product remains unsubstantiated, as the petitioner indicates that the IMS product was developed in India eight years ago, and other evidence in the record indicates that the product was introduced in the United States before the beneficiary joined the foreign entity's operations.

The specialized knowledge classification requires USCIS to distinguish between those employees that possess specialized knowledge from those that do not possess such knowledge. On one end of the spectrum, one may find an employee with the minimal one year of experience and the basic job-related skill or knowledge that was acquired through that employment. Such a person would not be deemed to possess specialized knowledge under section 101(a)(15)(L) of the Act. On the other end of the spectrum, one may find an employee with many years of experience and advanced training who developed a proprietary process that is limited to a few people within the company. That individual would clearly meet the statutory standard for specialized knowledge. In between these two extremes would fall, however, the whole range of professional experience and knowledge.

The beneficiary has 16 months of experience in providing implementation, training and support services for the petitioner's IMS billing module product. The petitioner states that because of the beneficiary's prior experience with an unrelated employer he was able to "more quickly pick up the job responsibilities." He underwent no formal or specialized training to learn about the IMS product and, based on the petitioner's representations, was able to provide product support and training to customers even while becoming familiar with the product. Counsel states on appeal that such knowledge cannot easily be transferred or taught to another individual, as it would take "several months" to impart knowledge of the petitioner's proprietary software, and "years" to impart knowledge of the medical billing industry. Elsewhere, the petitioner stated that it would "require at least a year of training before a qualified, outside individual would be able to perform the duties of Implementation Consultant on the IMS billing module." However, counsel's and the petitioner's claims are undermined by their representations that the beneficiary himself did not undergo a year or even several months of training in order to acquire the skills and knowledge needed to perform the duties of an implementation consultant. Rather, it appears that an employee who, like the beneficiary, already had experience in the medical billing industry could "quickly pick up the job responsibilities." Therefore, it cannot be concluded that the knowledge required to implement the petitioner's product and train users in its use is particularly complex, or that it would take a significant amount of time to train an employee who already has experience in the industry. 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.

The petitioner claims that the beneficiary is one of only three people in its international organization who possesses the claimed specialized knowledge, but offers no explanation as to what sets the beneficiary apart

from the other employees, other than his prior industry experience gained with an unrelated employer. The petitioner has not indicated whether or how the beneficiary's duties or knowledge of the petitioner's products is different from or advanced compared to other implementers, implementation team leaders or implementation project managers employed by the U.S. and foreign entities. The claim that the beneficiary is the only employee currently providing training and support on the ISM billing module is insufficient to establish that his duties involve the application of specialized knowledge or that the knowledge itself is indeed special or advanced. As discussed above, the IMS product was developed and implemented long before the beneficiary joined the foreign entity. The beneficiary appears to have been assigned to provide services related to the billing module based on his general industry experience rather than based on any advanced knowledge of the petitioner's own products.

Absent additional explanation regarding what sets the beneficiary's *company-specific* knowledge apart from other similarly employed workers within the organization, it cannot be concluded that the beneficiary's ISM billing module knowledge is truly "specialized" or that his knowledge of the product is "advanced" compared to his peers within the organization employed in similar roles. As discussed, the evidence of record suggests that the knowledge required to support the product and train end-users can be learned quickly by an individual with experience in the medical billing industry.

All employees can be said to possess unique skills or experience to some degree. Moreover, any 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 expertise with the application of one component of the petitioner's product in the marketplace 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., one of only three workers with years of medical billing industry expertise who is assigned to support the petitioner's medical billing product) 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 products gained during his 16 months 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 the application of a specific component of its product in the international marketplace are not persuasive, absent some description of how the beneficiary's knowledge differs from that of other members of the implementation team, who likely also specialize in supporting one or more modules of the petitioner's product.

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."[3] 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 skills, while impressive, demonstrate that he possesses knowledge that is common among software consultants who have worked in the medical billing industry. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's products or 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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[3] 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 Puleo memorandum, it 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.[4]

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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[4] 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 memoranda 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).