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



U.S. Citizenship
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File: EAC 08 117 52035 Office: VERMONT SERVICE CENTER Date: JUL 20 2009

IN RE: Petitioner: [Redacted]
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, Vermont 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 to employ the beneficiary in the United States 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 engaged in the provision of computer systems, network and software consulting services. It states that it is the parent company of the beneficiary's foreign employer located in India. The petitioner seeks to employ the beneficiary as a product support specialist for a period of two years.

The director denied the petition on August 28, 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.

On appeal, counsel for the petitioner asserts that the director made several incorrect assumptions with respect to the nature of the beneficiary's duties and the technologies with which he has been and will be working. Counsel contends that the beneficiary's specialized knowledge derives from his participation in the development of the software that he would be installing and customizing at customer sites in the United States. Counsel and the petitioner submit letters 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.

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 June 11, 2008. In a letter dated June 10, 2008, the petitioner stated that the beneficiary has been employed by its Indian subsidiary since October 2006 in the position of technical consultant. The petitioner described his duties as follows:

In this capacity, he has worked on installations of CA's [Computer Associates] and Cisco's software products such as CA Unicenter NSM3.1, Unicenter NSM R11, CAeHealth, CA Spectrum, CA Brightstor, Cisco switches and Cisco routers, etc. and troubleshooting of CA software. In addition, he was fulfilled [*sic*] specific responsibilities such as

1. Analyze, design, develop and test UNPN
2. Analyze, design, develop and test integration packages for products from [the petitioner], CA and Cisco in data center automation management area
3. Install and customize data center automation products from the above vendors as well [as] integrated customer IT service management products with above
4. Provide production support for solution deployments above

The petitioner further explained as follows:

In January 2008 [the petitioner] started development on Universal Network Provisioning Manager ("UNPN") a computer software product that enables automation of provisioning

across Cisco network products and servers in a data center. In March 2008 CA (formally Computer Associates) entrusted [the petitioner] with the task of developing and testing of the new release of its CA DCA (CA's Data Center Automation tool). CA DCA will enable CA to compete in the data center automation market space. The new major release of the project is scheduled to be launched later this year.

The beneficiary was part of [the petitioner's] overseas based . . . development and product readiness team that was instrumental in creating UNPN which automates IT provisioning processes using enterprise tools from CA and Cisco Systems and continues to work on it. He is part of the off-shore team that supports [the petitioner's] on-shore team developing UNPN. Thus he has specialized and advanced knowledge of this product and the mechanisms and means to customize it at a client site. His specific duties while developing this IP for [the petitioner] are:

1. Design, develop and test integration programs for UNPN.
2. As part of the integration test lab he installed, configured and integrated CA DCA Manager R11.2, Cohesion 6, CA Unicenter DSM R11.2, CA Service Desk Service Plus R11.2, Cisco switch 6500 and router 2651.
3. Create use and test cases for automating the data center provisioning process using the above products.
4. Develop process model using CA proprietary BPGenerator, Opalis integration module, Perl.
5. Enhance and maintain integration programs of UNPN based on customer feedback.

The petitioner stated that it partners with CISCO and CA in providing customization services to clients using CISCO and CA network and systems security related software added on products.

With respect to the beneficiary's proposed U.S. position, the petitioner stated that he will "continue to design, develop and test integration programs for [the petitioner's] product UNPN." Specifically, the petitioner stated that his duties will include the following:

- Analyze integration APIs of Cisco System's products such as Vframe and DCNM.
- Install, configure and integrate CA DCA Manager R11.2, Cohesion 6, CA Unicenter DSM R11.2, CA Service Desk Plus R11.2, Cisco switch 6500 and router 2651.
- Prepare use and test cases for automation data center provisioning processing above products.
- Develop process model using CA proprietary BPGenerator, Opalis integration module, Perl for CA DCA Manager Enhanced as well as maintain integration programs of UNPN based on customer feedback.
- Provide production support for customers deploying solutions using [the petitioner's], CA and Cisco products such as UNPN, CA DCA Manager, CA Unicenter NSM, Spectrum, eHealth, Cohesion, Unicenter Service Desk Service Plus, Cisco Switches and Routers. He will also work on integrating and installing these products at client sites.

These same duties are listed in the beneficiary's resume and appear to apply to his most recent assignment with the foreign entity as a software analyst/ESM consultant for the "CA: DCA Manager" project. According to the beneficiary's resume, he has worked on four other projects since joining the petitioner's subsidiary in October 2006. All four projects involved the implementation of CA Unicenter technologies for various clients. The beneficiary performed very similar duties while employed by two unrelated employers in India from 2004-2006.

The beneficiary indicates his "specializations" as: Unicenter NSM, Unicenter DSM, CA DCA Data Center Automation, CA eHealth, CA Spectrum, CA BrightStore, Unicenter SDSP, Cisco Vframe, Cisco DSNM and Cisco Routers/Switches. The beneficiary also lists the beneficiary's professional certifications, which include: Microsoft Certified Professional; CCNA; Computer Associated Certified Unicenter Analyst/Administrator; CA Unicenter Service Support Advance Implementation Partner Certification; CA Unicenter Desktop Management Foundation Implementation Partner Certification; and CA Unicenter Desktop Management Advance Implementation Partner Certification.

The director issued a request for additional evidence (RFE) on June 24, 2008. The director requested, *inter alia*: (1) an official position description from the petitioner's human resource records that clearly defines the beneficiary's job duties; (2) an explanation regarding any specialized knowledge the beneficiary possesses that is not known to the company's other consultants, programmers, analysts and engineers; (3) information regarding how the beneficiary's credentials compare to those of similarly employed workers within the organization to establish that the beneficiary's knowledge is advanced; (4) a training record from the human resources department documenting the manner in which the beneficiary gained the claimed specialized knowledge; (5) evidence of the training the beneficiary has received on client systems; (6) information regarding who owns the systems on which the beneficiary will be working; and copies of any contracts and/or service agreements between the petitioner and CA to clearly show the work involved and why a specialized knowledge employee from the petitioner is required. The AAO notes that the director referred to work to be performed at a client worksite; however, the petitioner indicated at the time of filing that the beneficiary would work principally at its Edison, New Jersey office.

In response to the RFE, the petitioner submitted a letter dated August 14, 2008, which reiterated the position descriptions previously provided for the beneficiary's current and proposed positions. The petitioner also reiterated that the beneficiary will perform his duties at its Edison, New Jersey office and commute to client sites as necessary. The petitioner further stated:

[The beneficiary's] specialized and advanced knowledge derives from the fact that he has worked on the development of the software products that he is coming to the USA to custom install at client sites or to customize per client needs. It would be economically expensive and practically unfeasible to hire any other professional and train them since it would take a year of hands on experience to do so.

The petitioner's response also included a copy of a Vendor Services Agreement executed between the petitioning company and Computer Associates International in 1996, along with a 1998 addendum to the agreement. The initial agreement stipulates that CA and its affiliated companies may acquire services from the petitioner by means of a Work Authorization which must set forth the period of performance, place of

performance, price, and performance and delivery schedule. The agreement provides that any software code, documentation, materials or other proprietary information arising from the agreement or work authorization shall be considered a "Work Made for Hire," and CA shall be deemed the "author" of the work product. The services agreement provides that all services and deliverables under a work authorization are subject to inspection and acceptance by CA.

The 1998 addendum to the agreement authorizes the petitioner to act as a non-exclusive Service Provider for CA's licensed software products as a participant in its Consultant Relations Program. CA is obligated to provide the petitioner with system, user and installation manuals for commercially released products for the purpose of educating the petitioner's employees and to perform professional services. CA is required to certify instructors and provide "level 1 and level 2 support." The petitioner is obligated to pay CA for training courses.

The director denied the petition on August 28, 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 capacity requiring specialized knowledge specific to the petitioning company. In denying the petition, the director noted the petitioner's failure to provide an official job description or training records for the beneficiary as requested in the RFE. The director also referred to the petitioner's contract with CA and noted that the beneficiary "will be working for CA on CA's systems and using CA's proprietary software." The director further observed that any training the beneficiary received from CA is not exclusive to the petitioner or its employees, and that CA contracts many vendors to perform similar services. Finally, the director concluded that the knowledge needed to perform the proposed duties could be "easily taught to any programmer analyst."

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a specialized knowledge capacity and has the requisite specialized and advanced knowledge. Counsel asserts:

Clearly, the knowledge was acquired by [the beneficiary] since he is one of the "parents" of the products (software) which is now part of the CA product suite. We install and then customize these CA products. [The beneficiary] is not only the parent but also helped in customizing the integration. As explained at length in the employer's letters the beneficiary's knowledge is specialized and advanced because, in addition to his supervisory responsibilities, require that his transfer [sic]. His specialized knowledge derives from the fact that ". . . knowledge can be gained only through prior experience with that employer" and ". . . cannot be easily transferred"

Counsel asserts that the beneficiary "was instrumental in designing a part of the CA software, furthermore he installed at our client sites." Therefore, counsel concludes that the beneficiary "has specialized and advanced knowledge of the product that needs to be customized at [the petitioner's] client's sites."

The petitioner also submits a letter dated September 23, 2008 in support of the appeal. The petitioner references its development of the UNPN product and its development and testing of the new release of the CA DCA product. With respect to these products, the petitioner states:

Having been involved in the development from the inception of the product, he has specialized and advanced knowledge of the product that is unique and that only few others within the offshore team possess. It would be prohibitiously [*sic*] expensive and very labor intensive to hire any other professional and train them to achieve the level of expertise that [the beneficiary] has gained through his more than one year involvement in the development of the product. His familiarity with the development of the project is essential in the troubleshooting and customization of the product to meet [the petitioner's] client needs.

The petitioner emphasizes that the beneficiary "will be working on deployment of [the petitioner's] UNPN as well as CA's DCA manager at our client sites and further fine tuning the product," and "will not be contracted to CA." The petitioner notes that the Vendor Services Agreement was submitted to substantiate the petitioner's relationship with CA, not for the purpose of describing the beneficiary's job assignment.

The petitioner notes that the beneficiary has been involved in the development of new products (UNPN) and releases of new products (CA DCA Manager) that require a background in a variety of CISCO and CA platforms. The petitioner acknowledges that the beneficiary had such background when he was hired by the foreign entity, but emphasizes that the beneficiary "has worked on the development of products/releases that have not yet been released in the market and are therefore not available as part of CA's training and training materials." The petitioner states that the beneficiary has used his expertise with CA products to enhance the development process for the petitioner's own UNPN product.

Finally, the petitioner submits the following description for the proposed product support specialist position:

Description:

The position will play a key role in the development, implementation and support for data center management product offering from [the petitioning company]. The position will work very closely with [the petitioner's] customers to validate usage of [the petitioner's] product on different customer environment, gather feedback, help them implement and provide production support.

Primary responsibilities:

- Design, develop and test integration programs for [the petitioner's] product Universal Networking Provisioning (UNPN)
- Implement and configure UNPN as well as related data center management products from CA and Cisco
- Setup and manage integration test lab for simulating customer specific environments. It includes installation, configuration of UPNPN, CA DCA Manager R11.2, Cohesion 6, CA Unicenter DSM R11.2, CA Service Desk Plus R11.2, Cisco switch 6500 and router 2651.
- Create use and test cases for automating the data center provisioning process using the above products.
- Develop process model using CA proprietary BPGenerator, Opalis integration module, Perl.
- Enhance and maintain integration programs of UNPN based on customer feedback.

- Required to travel [to] local customer sites for above.

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

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).¹

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

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

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to

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

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 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 in this case 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 an IT professional working with enterprise infrastructure management solutions, and require him to use knowledge and technical skills which appear to be primarily based on CA Unicenter and Cisco technologies, rather than on any technologies that were developed by the petitioning company. The AAO acknowledges the petitioner's assertion that the beneficiary has been involved in developing and testing the latest release of CA's DCA Manager product since March 2008, and that this is one of the products the beneficiary would be implementing for clients in the United States. The petitioner does not explain, however, how knowledge of an unaffiliated employer's proprietary products, even at the developer level, could be considered specialized knowledge related to the petitioner's organization. While such knowledge and experience may be valuable to the petitioner in fulfilling its contractual obligations with CA, and not widely known prior to the official launch of the latest product release, it does not fall within the statutory or regulatory definitions of specialized knowledge.

In addition, the petitioner emphasizes that the beneficiary has been involved in the development of its own product, UNPN. According to the beneficiary's resume, he has been involved in designing, developing, testing and enhancing integration programs for UNPN, but very little information has been provided regarding the product itself or the extent of the beneficiary's role in its development. The petitioner simply explained that UNPN automates IT provisioning processes using enterprise tools from CA and Cisco Systems. The AAO cannot determine based on the limited explanation that the knowledge required to install and support this product is particularly complex such that other similarly trained workers who possesses similar training and experience with CA and Cisco enterprise technologies could not install it. 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 that knowledge of the petitioner's UNPN product 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 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."

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 petitioner indicates that its U.S. employees have also been involved in the development of the UNPN product of which the beneficiary is claimed to have specialized knowledge, but declined to provide any information that would distinguish the beneficiary's role in its development from that of its other U.S. or foreign-based staff. The director specifically requested that the petitioner explain how long it would take to train other developers in any systems knowledge they are currently lacking, what knowledge the beneficiary possesses that other developers do not, and in what way the beneficiary's knowledge is more advanced than that possessed by other similarly employed workers within the organization. The petitioner did not attempt to respond to these requests, other than stating that the duties to be performed would require one year of training. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Given the petitioner's claim that it commenced development of the UNPN product in January 2008, and the petition was filed in June 2008, it is not clear why it would take one year to train an otherwise qualified professional on a product that was apparently developed in less than six months. There is no evidence in the record to suggest that the beneficiary himself has undergone any company-specific training while employed by the petitioning organization, or that he would be imparting his knowledge of the UNPN product to U.S. workers as a part of his proposed assignment. The petitioner has not established that the beneficiary's experience with this product alone constitutes specialized knowledge.

Finally, even if the AAO were to determine that the beneficiary's experience with UNPN and CA DCA constituted specialized knowledge, the petitioner must establish that the alien's qualifying year of employment abroad was in a position that involved specialized knowledge. 8 C.F.R. § 214.2(1)(3)(iv). The petitioner has repeatedly stated that it commenced development of the UNPN product in January 2008 and the CA DCA product in March 2008, both within six months prior to the filing of the petition. During the remainder of the beneficiary's 20-month period of employment with the foreign entity, he was engaged in implementing CA's Unicenter solutions for clients. Based on a review of the beneficiary's resume, he performed essentially the same duties and used the same technologies as a software analyst with two unrelated companies prior to joining the petitioner's subsidiary in October 2006. With the exception of his most recent project assignment abroad, there is no reference in the beneficiary's resume to his having experience with a product developed by the petitioner. Nearly all of the beneficiary's training and work experience to date, both within and outside the petitioning organization, has been as a CA-Unicenter specialist. Based on the evidence of record, it cannot be concluded that the beneficiary has been employed in a position requiring specialized knowledge for one full year.

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, processes and procedures gained during his 20 months of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner has not attempted to distinguish his knowledge, training or experience from that possessed by other workers beyond noting his involvement in the development in the UNPN product and CA DCA product. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's tools and processes for implementing projects. By this logic, any of them would qualify for L-1B classification if offered a position working on the same project in the United States. All employees can be said to possess skill sets that are unique to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced computer programmer 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 will not, by themselves, equal "special knowledge."² 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 and experienced employee who has been, and would be, an 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 employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among software developers in the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52. The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary 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.

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.

² 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).