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

U.S. Citizenship and Immigration Services

[redacted]

D7

File: EAC 08 206 51177 Office: VERMONT SERVICE CENTER Date: JUN 04 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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition to extend the employment of its executive director 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 New York corporation, provides executive recruitment services to the financial services sector and is a subsidiary of Watmough Mallett Ltd., located in the United Kingdom. The beneficiary was previously granted one year in L-1B classification in order to open a new office in the United States and the petitioner now seeks to extend his status for two additional years.

The director denied the petition on two independent grounds, concluding that the petitioner failed to establish: (1) that the U.S. company is doing business as defined in the regulations; and (2) that the beneficiary possesses specialized knowledge or that he will be employed in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the director misunderstood both the nature and complexity of the petitioner's business, and incorrectly concluded that the petitioner is not doing business as defined in the regulations. Counsel further emphasizes that the evidence submitted demonstrates that the beneficiary is a member of "the narrow class of key employees" for which the L-1B visa was intended. Counsel asserts that the beneficiary possesses specialized knowledge of the petitioner's services and techniques, and advanced knowledge of the company's processes and procedures. Counsel submits a brief and additional documentary evidence in support of the appeal.

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

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

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

(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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that, after one year, a visa petition which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first issue to be addressed is whether the petitioner established that the United States entity has been doing business for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines the term "doing business" as:

> *Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The beneficiary's initial L-1B classification petition was approved with a validity period from September 27, 2007 until September 19, 2008. Therefore, the petitioner must show that the petitioner has been doing business as defined by the regulations since the beneficiary's admission to the United States in L-1 status. The petitioner filed the instant petition on July 22, 2008.

In a letter dated July 17, 2007, the petitioner explained that its United Kingdom parent company provides executive search and market analysis services to the Global Equity, Structured Finance, Risk & Analysis and Infrastructure elements of the financial services industry. The petitioner primarily recruits mid- to senior-level financial professionals for clients that include large international investment banks and fund management

companies. It also conducts market analysis studies of compensation and hiring trends in this sector.

The petitioner explained that the U.S. company was established "to leverage off existing business relationships with clients located in North America," in order to accelerate U.S.-based revenues. The petitioner indicated that the U.S. entity achieved a small profit for the year ended January 31 2008, and stated that it was able to sign contracts with two substantial new clients in 2008, and establish a new client arrangement with a third client.

In support of the petition, the petitioner provided a "Period Trial Balance" for the period ended January 2008, reflecting sales of $150,000 and numerous business expenses including salary, rent, recruiting, travel, legal and accountant fees, insurance, etc. The petitioner also submitted bank statements for the months of February through May 2008, evidence of rent payments, and evidence of the client contracts and agreements referenced in its supporting letter.

The director issued a request for additional evidence (RFE) on July 29, 2008, in which he requested additional evidence to establish that the petitioner has been engaged in the regular, systematic and continuous provision of goods and/or services. The director instructed the petitioner to submit a copy of its U.S. corporate tax return, and copies of quarterly tax returns filed during the last quarter of 2007 and first two quarters of 2008.

In response to the director's request, the petitioner submitted additional bank statements and re-submitted copies of client contracts that were previously provided. In a letter dated August 20, 2008, counsel explained: "These contracts represent major client assignments and it takes a significant amount of continuous effort to obtain and successfully complete these types of assignments."

The petitioner also provided a copy of its 2007 Form 1120, U.S. Corporation Income Tax Return, for the fiscal year ended on January 31, 2008. The tax return shows that the petitioner reported total assets of $128,074 and reported gross receipts of $150,000. The tax return reflects wages paid to the beneficiary, rent paid and other business expenses incurred. The record reflects that the beneficiary is currently the petitioner's only employee.

The director denied the petition on August 29, 2008, concluding that the petitioner failed to establish that it is doing business as defined in the regulations. Specifically, the director stated:

> The U.S. office is acting as a middleman and not actually producing a product or providing a service other than to get contracts for the overseas office, which can be done overseas as well as here in the United States. Also, the beneficiary's role is to place professionals, therefore acting as an agent for other professionals and does not meet the requirements of "doing business."

The director also observed that the beneficiary is the only employee of the U.S. office in support of his conclusion that the company is not actively doing business.

On appeal, counsel for the petitioner asserts that the director applied a narrow definition of "doing business" that is not supported by the statute or regulations. Counsel emphasizes that the petitioner is engaged by clients

to provide services and is not merely acting as an agent or "middleman." Counsel asserts that the director ignored the complex processes that must be followed before a client will engage the company, as well as the complexity of the assignments completed for clients.

In support of the appeal, the petitioner submits excerpts from client agreements which describe in detail the services performed by the petitioner, and an affidavit from the beneficiary, who describes in detail the activities he undertook between October 10, 2007 and August 20, 2008 with respect to a single client engagement for which the petitioner received a fee of $200,000. The petitioner also submits evidence that it retained a recruitment firm in November 2007 to search for a suitable candidate for a consultant position at the U.S. office. Counsel notes that the search for a candidate to fill the position is ongoing.

Upon review, counsel's assertions are persuasive. The petitioner has established that it has been doing business as defined in the regulations for the previous year and has satisfied the regulatory requirement at 8 C.F.R. § 214.2(l)(14)(ii)(B).

First, the petitioner has shown that it is engaged in the provision of a service, i.e., executive recruitment services for major international firms in the financial sector. The evidence submitted demonstrates that the U.S. entity is charged with obtaining new clients, providing services to existing clients and producing its own work products for such clients, and is not merely a "middleman" for the foreign entity or an agent that does not conduct business. Furthermore, the record reflects that the petitioner's provision of services has been regular, systematic and continuous for the previous year. While the petitioner may not generate daily, weekly or even monthly receipts as a result of its business activities, the record demonstrates that each client engagement involves substantial productive work which develops over a number of months, and results in receipt of substantial fees. The fact that the beneficiary is currently the only U.S. employee is irrelevant to this determination.

Based on the foregoing, the director's decision will be withdrawn as it relates to this issue only.

The remaining issue in this proceeding is whether the petitioner established that the beneficiary 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.

In its letter dated July 17, 2008, the petitioner stated that the beneficiary's job duties "remain the same from the initial petition." The petitioner provided the following information regarding the beneficiary's U.S. duties:

> [The beneficiary] joined [the foreign entity] in 2003 and he has been intrinsically involved in the development of the company's clients and how the company manages ongoing relationships with them. [The beneficiary] specializes in the recruiting and placing of financial professionals who deal with complex, hybrid and esoteric financial instruments. He has the experience with our company that enables him to understand our client's needs and match those needs with prospective recruits who work in the complex area of finance.

The petitioner emphasized that the beneficiary is an extremely valuable person in its organization, as reflected by his receipt of annual compensation in excess of £350,000 in 2007. The petitioner noted that the beneficiary has been working in the financial sector of the recruitment industry since 2000 and came to the firm with substantial experience. The petitioner described the beneficiary's specialized knowledge as follows:

> [The beneficiary] has a high level of specialized knowledge of [the petitioning organization's] mode of operation with clients, how we evaluate prospective candidates and how to best match candidates with our client assignments. He has applied this knowledge on behalf of our clients in Europe and the US.

The petitioner's supporting documentation included a "Retained Search Proposal" prepared by the beneficiary for the position of "Head of Money Markets/Money Market Derivatives Trading" for a major international banking client. The proposal describes the petitioner's recruitment methodology and process as follows:

> The objective at [the petitioner] is to provide clients with a consultancy driven recruitment and market intelligence service. The approach we employ is to link clearly defined client driven projects to our own consultative knowledge driven methodology.
>
> Our methodology is one of retained search, where the client company retains our expertise for the entirety of a search project. Typically, our brief is to research the competitor market and to identify and qualify defined candidates. We then act as the official intermediary between the client and client defined candidates short listed in the process, facilitating and overseeing the interview process, subsequent negotiations and the candidate resignation process.
>
> We will employ a strongly research-driven approach to this assignment, identifying individuals across the investment banking and derivatives trading sectors. We will also fully utilize and support this activity with resources that are available to us, which will include use of our database as well as known contacts within the marketplace. This will provide a secure platform from which to manage the search process.

In the request for evidence issued on July 29, 2008, the director instructed the petitioner to provide evidence that establishes the duties performed by the beneficiary in the past year and the duties he will perform if the petition is

extended. The director advised that the initial description of the beneficiary's duties did not demonstrate that he is employed in a qualifying capacity.

In a response dated August 20, 2008, counsel for the petitioner stated:

> Nothing has changed regarding [the beneficiary's] duties and original approved petition. [1] [The beneficiary] continues to place highly paid professionals who deal with complex financial instruments with large multinational financial institutions based in NY and London.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is employed in a capacity requiring specialized knowledge or that he possesses such knowledge. In denying the petition, the director stated:

> Though requested, evidence of exact duties was not submitted and a statement from the petitioner requested USCIS to see the contracts submitted with the initial petition. USCIS is not persuaded that the beneficiary's duties [are] of a specialized nature above the other employees working for the overseas office.

On appeal, counsel for the petitioner contends that the beneficiary falls within the definition of a specialized knowledge worker as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Counsel states:

> The specialized knowledge worker visa was intended for a narrow class of key employees and our evidence puts the Beneficiary squarely within that narrow class of employees. The evidence submitted also puts the Beneficiary within both of the alternate prongs of specialized knowledge ("knowledge of Petitioners service . . . techniques, and advanced knowledge of the Petitioner's processes and procedures"). The Petitioner's business is a professional service/intangible business wherein its processes and procedures are intertwined with the services provided to Clients.

In support of the assertion that the beneficiary is a "key employee", counsel emphasizes that the beneficiary is a shareholder and director of the petitioner's parent company, and generated over $1.5 million in revenue during the last fiscal year in the United Kingdom, for which position he received over $700,000 in compensation.

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[1] Although the agency may generally consider the previous approval of a petition when the petitioner seeks an extension, USCIS has no authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Each petition stands on its own merits and is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding and will not combine subsequent extension petitions with previously filed nonimmigrant visa petitions. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the director requests additional evidence that the petitioner may have submitted in conjunction with a previous nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence.

The petitioner submits a company overview in chart form, which describes the activities of the foreign entity, the U.S. company and the companies' interactions with clients and candidates. The chart refers to the parent company's "own proprietary executive search methodology," and the U.S. company's need to train new hires in this methodology. The petitioner also submits a chart describing its four-step "approach to doing business," which includes: (1) preparation for and presentation of the client pitch after careful research of the relevant sector, in competition with other executive search firms; (2) research and evaluation of possible candidates employed by the client's competitors and approach of candidates; (3) screening candidates and collating a list of recommended candidates based on a number of variables; and (4) serving as advisor and mediator between the client and selected candidates during salary negotiations and resignation.

The petitioner also submits an affidavit from the beneficiary in which he provides an account of the company's "executive search methodology." He states that the company's consultants are required to gain a full understanding of the specific market sector in which they are recruiting based on parameters set out by a client, and to have "an in-depth understanding of the client organization in order to best represent it to potential candidates." The beneficiary also states that consultants must "employ their own specialist knowledge/experience" to approach and meet with candidates and explain the role within the client organization without divulging the identity of the client.

The beneficiary goes on to state:

> The consultant has to have specialist knowledge to be able to benchmark a particular candidate's performance to the performance of the broader market and be very aware of what constitutes poor, average or out-performance. The consultant also has to be very aware of specific circumstances which might mitigate poor or average performance and likewise be wary of the potential of fabrication when evaluating out-performance.
>
> . . . . Finally, because ultimately a candidate will only change their employer to further their own career, it is crucial that the consultant has a full understanding of both the strengths and weaknesses of the client organization as well as of the candidate, in order to best advise both parties on their mutual compatibility going forward. To be in a position to make such an evaluation takes a lot of experience on the part of the consultant and specialist knowledge of both the market sectors and client organization being covered.
>
> The thoroughness of our due-diligence process is an integral part of [the petitioning organization's] search methodology which we believe separates us from our competitors. We feel that this approach is of particular interest to clients in the US as we have been led to believe that few suppliers offer such a bespoke level of service.

Finally, the petitioner submits a letter dated September 5, 2008 from [redacted], managing director of the petitioner's parent company. [redacted] indicates that the beneficiary was chosen for the U.S. assignment because he is one of the company's biggest revenue generators and because its founders "have grown to trust him as well as respect his business development and execution abilities." [redacted] describes the beneficiary's duties in the United States as follows:

- To run its day to day and ongoing financial affairs. Naturally, we want these responsibilities to be in the hands of someone that we know and trust.
- To develop business opportunities within our existing client base. [The beneficiary] is well known within this client base as one of the company's most senior operatives.
- To develop new clients, where we are better positioned to do so in the US than in Europe. The beneficiary's longevity of service in the company enables him to both sell the organization locally as well as globally. . . .
- [The beneficiary] is tasked with pitching for all mandates (search assignments) on behalf of [the petitioner] in the US and the Americas more broadly. This business is carried out in the name of [the U.S. company] and first and foremost for the benefit of the American entity.
- [The beneficiary] is also tasked with meeting candidates and writing reports associated with our search work carried out in the US. Much of the work would be passed on to additional employees of [the U.S. company] in due course.
- [The beneficiary] is responsible for all database related matters for the company in the United States. In due course when new members of staff are hired we intend that [the beneficiary] imparts very specifically how we store, manage and use our data. As we are an organization that depends very heavily on quality of data in order to advise our clients and carry out searches most rapidly and efficiently, this is very important to us.

On the basis of the above points we believe that in order to carry out his remit [the beneficiary] satisfies the definition of "specialized knowledge" . . . . Moreover, it will be his responsibility to transfer this specialist knowledge to new members of staff that going forward are hired into the company. . . .

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).

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]

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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

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

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

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

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

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Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

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

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

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

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and prove that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed

specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

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

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

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Preliminarily, the AAO acknowledges that the beneficiary is undoubtedly a "key employee" within the petitioner's organization, and one who occupies an elevated position as a shareholder and director of the foreign entity. His value to the organization and his qualifications for the position of executive director of the U.S. office are not in question. However, the determination as to whether he possesses specialized knowledge specific to the petitioning organization and is employed in a position requiring application of such knowledge is a separate issue that it unrelated to his status as a key employee. The beneficiary cannot qualify for this visa classification solely on the basis of his status as a shareholder and leading earner of the company.

Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced executive recruiter employed by the petitioning organization or in the executive recruiting industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner has referred to its use of a "proprietary executive search methodology"; however it has neither explained nor documented these methodologies, nor clarified what sets its methodologies apart from other

firms providing the same services to the same clients in the same market sector. While knowledge need not be proprietary in order to be considered specialized, the petitioner must still establish that the knowledge possessed by the beneficiary and utilized in the proposed position is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. Based on the evidence of record, it is evident that the petitioner's clients establish the exact nature and parameters for the services to be provided and choose from competing executive search firms after considering multiple proposals.[3] The only distinction made between the petitioner's methodology and those utilized by other firms is the beneficiary's statement that the "thoroughness" of the petitioner's due diligence process separates it from its competitors. Again, the petitioner has not elaborated as to what makes its methodology comparatively "thorough," especially in light of the evidence that each client has specific steps they wish to have followed in identifying, screening, recommending and selecting candidates for executive financial services positions.

Accordingly, despite the petitioner's claim, the record does not establish how, exactly, the beneficiary's knowledge materially differs from knowledge possessed by other experienced personnel employed by the petitioning organization or by experienced consultants in the executive recruitment services industry at-large. The beneficiary himself indicates that the "specialist" knowledge required for the position includes understanding the dynamics of specific market areas based on parameters set out by clients, having an in-depth understanding of client organizations, and having knowledge of the strengths and weaknesses of client organizations and individual candidates. Knowledge regarding specific financial sectors, individual key players within these sectors, and the major international financial firms, is not knowledge that can be considered specific to the petitioning organization, and is not "specialized knowledge" as defined in the statute and regulations.

Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's company-specific knowledge, such as its "methodology" cannot be imparted to a similarly experienced executive recruiter in a relatively short period of time. The petitioner indicates that the beneficiary will impart to new hires how the petitioner stores, manages and uses data maintained on its database, but does not indicate the complexity of such knowledge or how long it would take to impart. Most experienced recruiters who have worked for similar firms likely followed similar methodologies to locate and place candidates and utilized databases in conducting their research. The lack of detail with respect to explaining the company-specific knowledge required for the position precludes a finding that such knowledge is truly specialized or advanced. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by experienced executive recruiters generally throughout the financial services industry.

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[3] The fact that the petitioner's clients consider proposals from other executive recruiting consulting companies further supports a conclusion that the petitioner's clients simply require the services of professional executive recruiting consultants with experience in the financial sector, rather than persons with specialized knowledge of the petitioner's products or services.

The fact that workers outside the organization have not been exposed to the petitioner's internal database or "proprietary executive search methodology," does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess unique skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced executive recruiter is not "specialized knowledge." Moreover, the petitioner has not submitted evidence that any knowledge of its methodologies or familiarity with its database can be considered "special" or "advanced." Rather, the petitioner must establish that qualities of the petitioner's 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.

Again, the AAO acknowledges that the beneficiary is clearly trusted with a great deal of responsibility by the petitioning organization and well known to the petitioner's existing client base; however the regulations require the beneficiary to possess more than an elevated stature within the petitioning company and existing relationships with the petitioner's clients. Here, there is no indication that the beneficiary has any knowledge of the company's methodologies or processes which would truly separate him from any other similarly-employed worker employed within the petitioner's organization or in the industry at-large.

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

The AAO acknowledges that USCIS previously approved an L-1B nonimmigrant petition filed on behalf of the beneficiary. The prior approval, however, does not preclude USCIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If other nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. Neither the director nor the AAO is required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

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.