

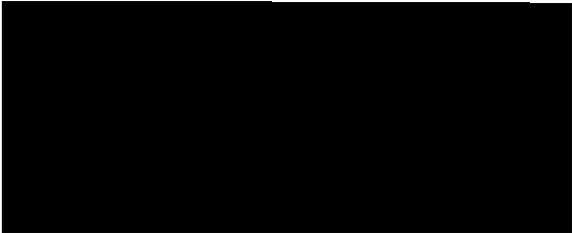
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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File: WAC 08 207 50885 Office: CALIFORNIA SERVICE CENTER Date: JUN 11 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition to employ the beneficiary 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 semiconductor manufacturer, is the parent company of the beneficiary's foreign employer located in Bangalore, India. The petitioner seeks to employ the beneficiary as a physical design engineer at its Chandler, Arizona facility for a period of approximately eight (8) months.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director observed that the record consisted primarily of the unsupported assertions of the petitioner, and that such assertions were insufficient to establish the beneficiary's eligibility.

On appeal, counsel for the petitioner asserts that the director disregarded the petitioner's probative evidence of the beneficiary's eligibility for L-1B classification. Counsel asserts that the petitioner clearly differentiated the beneficiary's knowledge from that of the remaining U.S. and Indian workforce employed by the petitioning organization. Counsel further asserts that the director requested evidence that "simply remains unavailable," and inappropriately denied the petition based on a lack of evidence. Counsel asserts that "the petitioner's statements/documentation regarding employment, the critical need for the beneficiary's services, and the beneficiary's training and education are the applicable and appropriate 'hard evidence' of specialized knowledge." Counsel submits a detailed brief in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 22, 2008. In a letter dated July 21, 2008, the petitioner stated that the beneficiary has been employed by its Indian subsidiary since July 18, 2005, where he currently serves in the position of Physical Design Engineer. The petitioner described the beneficiary's current duties as follows:

[The beneficiary's] job duties and position at [the foreign entity] are similar to those that will be performed in the upcoming temporary U.S. assignment. At [the foreign entity], [the beneficiary] is responsible for providing physical design for block-level (cell level) to interface or FUB (Functional unit Block) level of the CHIP IO ring. He also provides floor planning for multiple functional blocks, ESD planning, latch-up prevention, mixed-signal routing, and the physical design for the IO interfaces.

The position requires familiarity of proprietary, advanced semiconductor equipment technology, including but not limited to [the petitioner's] proprietary manufacturing processes, as well as [the petitioner's] operational and product procedural guidelines. As a result of [the beneficiary's] specialized knowledge in these areas, he is at a more advanced level than other employees at the [petitioner's] India site who have the same job title. [The beneficiary] was selected for this temporary assignment specifically because of his specialized knowledge of these . . . proprietary processes and systems.

The petitioner indicated that the beneficiary, as a Physical Design Engineer in the United States, will be "responsible for driving and integrating the double dynamic ram (DDR) input and output (IO) interface full chip requirements, and enabling next general digital home product (low cost integrated memory controller) tape out on schedule." The petitioner described his specific proposed duties as:

- Working on DDR interface custom layouts in order to meet full chip requirements; Verifying layouts to meet process design rules with the Chandler project environment;
- Attending regular meetings with the Sodaville team full chip owner and inputs to meet the integration requirements;
Attending regular meetings with the DDR team at Bangalore and share inputs gathered from the full chip owner; and
- Working continuously with the Design Automation Engineer to enable smooth integration process.

This position requires an employee who possesses specialized and advanced integrated knowledge of [the petitioner's] architecture-based platform for home entertainment, [the petitioner's] specific design techniques and processes, and [the petitioner's] P1266.8 process design rules and design methodology. These processes and methodologies are proprietary to [the petitioner] as they were developed by [company] engineers. This knowledge is specialized since it is all [company]-specific. It can only be acquired through on-the-job training at [the petitioner] or a [company] subsidiary and cannot be acquired through education or work experience with another company.

The petitioner referred to a 1994 legacy Immigration and Naturalization Service (INS) memorandum that addresses the interpretation of specialized knowledge and stated that the beneficiary meets the criteria set forth in the memorandum and the applicable regulations.¹ Specifically, the petitioner stated:

[The beneficiary] possesses an advanced and specialized knowledge of [the petitioner's] architecture-based platform for home entertainment, [the petitioner's] specific design techniques and processes, and [the petitioner's] P1266.8 process design rules and design methodology. He has expertise in [the petitioner's] manufacturing processes and products which he acquired at [the foreign entity] through on the job training and site training classes. Specifically, he has spent the last three years in on-the-job training using [the petitioner's] proprietary manufacturing processes.

In support of the petition, the petitioner submitted evidence that the beneficiary was awarded a diploma in electronics in June 2005 after completion of six semesters of study at a technical training school in Bangalore, India.

The director issued a request for additional evidence on July 31, 2008, in which the director requested additional evidence to establish that the beneficiary has specialized knowledge. Specifically, the director instructed the

¹ Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994)(hereinafter "Puleo memorandum").

petitioner to submit: (1) the total number of employees at the foreign location where the beneficiary is employed; (2) the number of foreign nationals employed at the U.S. location where the beneficiary will work, including job titles and visa status; (3) the number of L-1B visa holders transferred to the U.S. location over the last five years; (4) the number of persons at the U.S. location holding the same or similar position as the beneficiary; (5) evidence regarding any special or advanced duties performed by the beneficiary, including an explanation as to how the beneficiary's duties abroad and in the United States are different from those performed by others; (6) evidence that the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known by others employed by the petitioner in the same field; and (7) an explanation regarding the training the beneficiary will provide to other workers in the United States.

In response to the RFE, the petitioner submitted a letter dated September 10, 2008. The petitioner explained its use of the L-1B classification, noting that its design, fabrication and manufacturing sites are located around the world. The petitioner noted that each product is assigned to a particular business group, which often includes both U.S. and foreign employees, resulting in a need for U.S. and foreign sites to partner resources from conception to the final production phases of an assigned product. The petitioner emphasized that in cases where a business group has both U.S. and foreign employees working on a product, "the employees are not duplicating work or development. Rather each site contributes to a portion of the production, with an eye toward merging activities to generate a single, quality product."

The petitioner stated that it utilizes the L-1B classification to temporarily bring the team lead of each business group to the U.S. for critical steps in the production cycle, and to "temporarily bring team leads and/or team members with specific advanced knowledge of [the petitioner's] proprietary processes and products to assist the U.S. team and/or site with new processes and/or tools" as required by production cycle deadlines. The petitioner stated that, in the instant matter, the beneficiary's direct input in the DDR input and output interface integration process at the Chandler, Arizona site will ensure that the petitioner's digital home product is completed on schedule.

The petitioner provided additional background information on the petitioner's "Sodaville project" which involves the development of "a next generation home entertainment product (a low cost integrated memory controller)." The petitioner stated that the beneficiary "will be performing the physical verifications on the DDR family interface, which entails density testing and performing a design rules check (DRC) and layout versus schematic (LVS) test." The beneficiary will then communicate any issues uncovered by his verification with the "full chip team" in Arizona and provide continuous feedback on full chipset issues to the DDR team in India to ensure that they meet the full chip requirements on schedule.

The petitioner emphasized that the knowledge the beneficiary possesses can only be gained through employment with the petitioning group, and with specific training on DDR layout methodologies as applied within the petitioner's production cycle. The petitioner stated that the knowledge could not easily be transferred to a company employee working within a different business group or with different equipment/tools.

In response to the director's specific inquiry, the petitioner indicated that there are no U.S. workers at the Arizona worksite performing the duties of the beneficiary's proposed position. The petitioner stated that there is currently one Physical Design Engineer among the site's 5,823 employees, but that he or she does not operate in the Sodaville Project group, and does not have the project design knowledge needed for the integration of the DDR.

The petitioner emphasized that the beneficiary will not add to or displace the U.S. workforce, but will only briefly travel to the *United States to verify and integrate the DDR into the full chipset.*

In response to the director's request for an explanation regarding any special or advanced duties the beneficiary performs, the petitioner stated:

The beneficiary's duties differ from other [company] employees because his duties are specific to the Sodaville project and the DDR design for that project. [The petitioner] employs other Physical Design Engineers, but each engineer works within a particular division, which is part of a larger business group. Furthermore, each division is assigned to a specific product.... Therefore a Physical Design Engineer from a different division would not have the Sodaville project-specific knowledge of the product's DDR design that the beneficiary possesses. *Although other design engineers comprise the India-based DDR team, the beneficiary's in-depth knowledge and training in physical verifications and DDR design distinguish him from the rest of the team. This elevated level of knowledge concerning the product's design and the transfer of that knowledge to DDR integration activities separate and elevate the beneficiary above the rest of the team.*

* * *

The Sodaville project is being coordinated between teams in both India and the U.S. Development of the DDR layout has been confined to the Bangalore, India facility, while the full chip team is based in Chandler, Arizona. As these teams have yet to begin integrating their designs, the position involved in this petition does not currently exist in the U.S. Furthermore, due to its required specialized knowledge of the DRR layouts and design rules for the p1266.8 ... process, the position cannot be assigned to a U.S. employee.

In addressing how the beneficiary's training or experience is uncommon, noteworthy or distinguished, the petitioner stated that the beneficiary "has spent the last five years working with physical verification techniques and DDR design," and emphasized that these "intense, specific duties coupled with his previous DDR layout experience provide the beneficiary with precise product knowledge that is required to validate the design and power-on of the product." The petitioner stated that the beneficiary is the only physical design engineer at the Bangalore site with the knowledge required to complete the Sodaville project, and that he will be the only such engineer at the Chandler site.

The director denied the petition on September 22, 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 that requires specialized knowledge. In denying the petition, the director observed that the petitioner provided no evidence in support of its assertions regarding the beneficiary's advanced and specialized knowledge, and no evidence of the claimed training he underwent while employed by the foreign entity. The director emphasized that the record consists primarily of the petitioner's unsupported assertions.

The director acknowledged the petitioner's statements that no other worker could perform the proposed duties, but stated that "a scarce skill does not necessarily establish that the skill derives from specialized knowledge." The director determined that the beneficiary's knowledge had not been shown to be advanced relative to the rest of the petitioner's workforce. The director also questioned whether the petitioner would realistically "rely so heavily on the aptitude of one employee for the completion of a project."

The director, while granting that the beneficiary's knowledge is company-specific, determined that the skills required to perform the duties had not been shown to require specialized knowledge of the petitioner's product, processes or procedures that "surpasses the ordinary or usual," such that the beneficiary would rise to the level of "key personnel."

On appeal, counsel for the petitioner asserts that the director failed to consider the evidence submitted in response to the RFE, and instead relied on "boilerplate" language that did not include a meaningful analysis of the petitioner's evidence. Counsel asserts that the petitioner submitted significant probative evidence to establish that the beneficiary is a key employee possessing specialized knowledge, and to distinguish the beneficiary from the U.S. company's workforce.

Counsel asserts that the director implemented a standard for L-1B classification that is "inapplicable and unrealistic," by requiring that the petitioner distinguish the beneficiary from other workers in the semiconductor industry. Counsel emphasizes that it does not have access to and cannot provide information that pertains to the confidential and proprietary standards of its competitors. Counsel further asserts that the standard of comparing an L-1B beneficiary to employees outside the petitioner's operations is not mandated by statute or regulation. Counsel asserts:

The L-1B classification is based on employment with a petitioner and a beneficiary's qualifications; thus, the petitioner's statements/documentation regarding employment, the critical need for the beneficiary's services, and the beneficiary's training and education are the applicable and appropriate "hard evidence" of specialized knowledge.

Ultimately, the comparative evidence regarding an "outside group" requested by [the director] cannot be provided, and therefore, creates a standard that is impossible to meet. . . . [The petitioner] properly established specialized knowledge by detailing the importance of the process at hand and confirming [the beneficiary's] specialized and narrowly-tailored experience within that process. This viable, "hard" evidence properly distinguishes [the beneficiary] from [the petitioner's] remaining India and U.S. workforces. More importantly, the evidence [the petitioner] provided establishes [the beneficiary] as a key employee possessing specialized knowledge.

Counsel disagrees with the director's determination that the petitioner did not distinguish the beneficiary from its remaining workforce, emphasizing that the petitioner explained in detail the "integral nature of the process on which [the beneficiary] would work and [the beneficiary's] expertise with the process." Counsel notes that "the product is one of [the petitioner's] new System-on-Chip products set for a 2009 release to the ever-evolving internet consumer electronics ("CE") market." Counsel further explains that the product is critical to the petitioner's expansion to the "internet TV" arena and essential to the company's competitiveness, and that it

cannot be marketed until the physical verification process for I/O components is completed at the Chandler, Arizona facility. Counsel asserts that the petitioner would not use a "mere 'competent' employee to secure the functionality of a critical product," and instead filed the L-1B petition based on the beneficiary's specialized, advanced and narrowly-tailored experience with DDR and physical verification.

Counsel further states:

[The beneficiary] is not merely a skilled worker; rather, he is a key employee whose expertise regarding an essential process in the production of [the petitioner's] products is required in the U.S. to complete a product vital to [the petitioner's] competitiveness in the industry. Some of the [company]-sponsored training [the beneficiary] has completed includes: [the petitioner's] 65 nanometer (p1265) technology, [the petitioner's] 45 nanometer (p1266) technology, VLSI back end design flow, high speed CMOS design, and low power circuit design. [The petitioner] would not undergo the significant expense of temporarily transferring [the beneficiary] to the U.S. so that he can perform a routine task. . . .

Ultimately, the significance of the product at hand and the crucial aspect of the physical verification process establish the specialized knowledge at the basis of the L-1B petition.

Counsel contends that the director's decision should be reversed because the director ignored the "probative evidence" it requested to establish specialized knowledge, which counsel asserts was included in the petitioner's response to the RFE. Counsel states that the director requested such evidence based on a need to make comparisons between the beneficiary's knowledge and the remainder of the petitioner's workforce and then ignored the evidence submitted in response. Specifically, counsel states:

[T]he denial neither addresses the responsibilities of the assignment and the significance of the physical verification process, nor explains why the significant employee data that [the petitioner] provided does not differentiate the beneficiary from [the petitioner's] remaining workforce.

In addition, counsel argues that the director "unreasonably implies a lack of candor on the part of [the petitioner] by citing [the petitioner's] statement that 'no other worker can step into the beneficiary's role'" and calling such statement disingenuous. Counsel asserts that the director's conclusion is unfair and evidences a misunderstanding of how businesses operate in the global economy. Counsel explains:

[The petitioner] employs other Physical Design Engineers, even with [the beneficiary's] own group at the India site. However, as required by the L-1B regulations, [the beneficiary] operates at a level above his peers at the India site due to this specific knowledge of DDR design and the physical verification process as it relates to the project/product at hand. It remains possible for another of [the petitioner's] physical design engineers to complete the U.S. assignment, but not without significant training on the specific design and architecture of the product. Such training would result in considerable delay and cost to the project at hand and the project that the other physical design engineer would have to abandon to complete the U.S. assignment. . . . It remains unreasonable for [the director] to request [the petitioner] to distinguish [the beneficiary] in terms

of training and experience, to then disregard the distinction as improbable, and lastly, imply that the very distinction [the director] requested is disingenuous.

Counsel requests that in light of the director's failure to consider the petitioner's response to the RFE, the director's decision should be overturned.

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

Looking to the language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf.* Westen, *The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

1756; Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).²

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

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

² Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

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

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

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

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

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

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

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

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

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(I)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim, particularly with respect to the beneficiary's employment with the foreign entity. The petitioner has failed to identify and document any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other physical design engineers employed by the company. 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)).

Therefore, the petitioner's claim primary fails on an evidentiary basis. As noted above, counsel asserts that "the petitioner's statements/documentation regarding employment, the critical need for the beneficiary's services, and the beneficiary's training and education are the applicable and appropriate 'hard evidence' of specialized knowledge." The record as presently constituted contains little of the applicable and appropriate "hard evidence" to which counsel refers, and specifically contains little information regarding the beneficiary's employment with the foreign entity, and no documentation of the beneficiary's claimed company-specific training and education. This evidence is critical, as the petitioner claims that the beneficiary's classroom training, on-the-job training and experience gained during his three years of employment with the foreign entity render him the only employee within the petitioner's multinational organization who is readily able to perform the proposed services in the United States. The AAO does not agree with the director's determination that the petitioner's claim is "disingenuous," but does concur with the director's determination that documentary evidence is needed to establish the claim that the beneficiary's knowledge is indeed specialized or advanced. The director clearly emphasized the lack of evidence in the record regarding the beneficiary's training and advanced knowledge.

For example, the petitioner indicates that the beneficiary currently serves in the position of Physical Design Engineer at the foreign entity's Bangalore facility. However, the petitioner has not specified when he was assigned to the Sodaville Project, how long the Sodaville project has been in development, how his role in the project differs from that of other physical design engineers assigned to the same project, or how the knowledge and experience required for this project differs from that required for other projects based on similar technologies.³ Such background information regarding his employment is important given the claim that the beneficiary has developed a unique skill set that is not possessed by any other employee in India or the United States.

Furthermore, the petitioner's description of the beneficiary's position with the foreign entity was only two sentences long and made no reference to a specific project or the specific product on which the beneficiary has been working. The petitioner stated that the foreign position requires "familiarity of proprietary, advanced

³ The petitioner submits on appeal a company news release dated July 24, 2008, which indicates that the Consumer Electronic (CE) chip codenamed "Sodaville" is one of 15 "System on Chip" (SOC) products being developed by the company, and is the second-generation version of a CE chip codenamed "Canmore" that was scheduled for a 2008 release. The news release also indicates that the company is making the SoC chip designs based on the same blueprint as the company's existing processors.

semiconductor equipment technology including. . . [the petitioner's] proprietary manufacturing processes, as well as [the petitioner's] operational and product procedural guidelines." The petitioner went on to state that the beneficiary is "at a more advanced level than other employees" at the same worksite with the same job title, noting that the beneficiary acquired "an advanced and specialized knowledge of [the petitioner's] architecture-based platform for home entertainment, [the petitioner's] specific design techniques and processes, and [the petitioner's] P1266.8 process design rules and design methodology." The petitioner further stated that the beneficiary has expertise in the company's manufacturing products and processes gained through "on the job training and site training classes" and that he had spent the last three years in on-the-job training using the company's proprietary manufacturing processes.

The AAO notes that the petitioner provided little basis for its conclusion that the beneficiary's knowledge is "more advanced" than that of similarly-employed workers, who also would also reasonably complete company training in the petitioner's products and processes, nor did it provide any documentation of the beneficiary's claimed training.

Therefore, the director asked the petitioner to explain how the beneficiary's duties performed abroad are different from those of other workers in the same type of position, and to explain how the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known by the petitioner's employees working in the same field. The director noted that the petitioner should submit "probative evidence to corroborate the statements made in its initial filing." It should be noted that this request was separate from the director's request for evidence regarding the number of similarly-employed workers in the United States and the number of L-1B visa holders located at the U.S. facility to which the beneficiary will be transferred.

In response to the director's request for additional information and evidence regarding the beneficiary's training and experience, the petitioner stated that the beneficiary "has spent the last five years working with physical verification techniques and DDR design." The petitioner stated that this experience, "coupled with his previous DDR layout experience" provides the beneficiary with "precise product knowledge." As noted above, the evidence of record indicates that the beneficiary has been working for the foreign entity for three years, not five years, and indicates that he had no prior work experience at the time he was hired by the foreign entity. The beneficiary was in his third semester of technical school five years before the petition was filed. In light of these facts, these statements from the petitioner do not appear to be accurate. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the director's request for evidence as to how the beneficiary's duties differ from those of other employees in the petitioner's workforce, the petitioner emphasized that the beneficiary's duties in India are specific to the Sodaville project and DDR layout design for that project. The petitioner acknowledged that the DDR layout design has been confined to the Bangalore facility, but stated that other design engineers assigned to this project component in India do not have the beneficiary's "in-depth knowledge and training in physical verifications and DDR design." The AAO notes that the job description provided for the beneficiary's foreign position at the time of filing did not explicitly mention his responsibility for or experience in performing DDR design or physical verifications, and the petitioner did not submit evidence of

any training he has received in these areas. There is also no information in the record regarding the size of the project team in India or the number of physical design engineers working on the DDR design aspect of the project.

If, as stated by the petitioner, the beneficiary's specialized knowledge is solely based on his experience with a narrow aspect of the Sodaville project that is not possessed by any other employee within the multinational company, then it is reasonable to expect the petitioner to explain exactly what that knowledge is, what makes it "special" within the company, when and how the beneficiary gained it, and how much experience he has in the role of Physical Design Engineer for this project. The record shows that the beneficiary was hired by the foreign entity when he was barely 19 years old, and that he had no professional work experience at the time. Therefore, information regarding the beneficiary's training and employment history within the company, and information regarding his project assignments and duties abroad, is critical to support a claim that his knowledge is indeed specialized and advanced. At a minimum, the petitioner must establish that the beneficiary has been employed in a capacity involving the claimed specialized knowledge of DDR layout design and physical verification for the Sodaville project for at least one year at the time the petition was filed.

Overall, the petitioner's response to the RFE offered little evidence to corroborate its initial claim that the beneficiary "is at a more advanced level than other employees at the [company's] India site who have the same job title," other than explaining that all physical design engineers are assigned to specific products within particular divisions within larger business groups and therefore have acquired product and project-specific knowledge that is not shared by other persons with the same job title. The petitioner specifically requested "probative evidence" to corroborate the claims made in the initial filing regarding the beneficiary's advanced knowledge of products and processes and his level of training and experience. The petitioner's response did not directly address these concerns or include supporting evidence to substantiate its claims regarding the beneficiary's classroom and on-the-job training which form the basis of the claimed specialized knowledge. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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). The petitioner has not established that the instant beneficiary has "advanced knowledge of the company's processes and procedures."

Therefore, the remaining question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary products and processes alone constitutes specialized knowledge. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification.

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

workplace requires a high proportion of technicians and specialists." The agency concluded that:

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

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

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

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

Id. at 53.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself, will not equal "special knowledge." USCIS must interpret specialized knowledge to require more than fundamental job skills or a short period of experience.

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.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by other employees of the petitioning organization. The fact that the beneficiary and a select group of workers possess a very specific set of skills does not alone establish that the beneficiary's knowledge is indeed special or advanced. All employees can be said to possess unique skill sets to some degree. Moreover, the proprietary or unique qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Here, based on the petitioner's representations, each physical design engineer within the petitioner's organization is assigned to work on a specific component of a specific product within a specific division within a specific business group of the company and therefore the

knowledge possessed by each engineer, even within a specific project, is different.

Given this scenario, it appears that any physical design engineer employed by the petitioner's group of companies would be deemed to have specialized knowledge, because they would all have "narrowly tailored" knowledge not possessed by any other person within the company. This interpretation of "specialized knowledge" is untenable as it would essentially allow the petitioner to utilize the L-1B classification for any technical employee who had one year of project experience. Rather, the petitioner must establish that qualities of the particular process or product require an individual to have knowledge beyond what is common among its workforce, or to establish that the beneficiary has advanced knowledge of the product. This has not been established in this matter. The fact that other workers may not have the same level of experience with a particular product is not enough to equate to special or advanced knowledge if the gap could be closed by the petitioner by simply revealing the information to a similarly trained or experienced employee who has worked on a similar product.

While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among a small subset of workers, will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce.

The AAO acknowledges counsel's assertion regarding the essential nature of the process to be carried out by the beneficiary, and counsel's assertion that the fact the beneficiary was selected for the U.S. assignment "points to his distinguished standing within [the petitioner] and the significance of his contributions to [the petitioner's] operations." The AAO does not doubt that the beneficiary is a valuable employee who is capable of performing the work described, nor does it doubt that the work is important to the petitioner's product development efforts. However, the fact that the petitioner does not employ a Physical Design Engineer with the same project experience as the beneficiary in Chandler, Arizona who could readily perform the intended duties does not automatically lead to a conclusion that the instant beneficiary must possess specialized and advanced knowledge. Contrary to counsel's assertions on appeal, the petitioner did not distinguish the beneficiary in terms of his training and experience and the record remains devoid of information regarding his claimed classroom training, his claimed three-years of on-the-job training, and the duties he performed for the offshore component of the Sodaville project that established him "at a level above his peers." Counsel's references on appeal to several training courses completed by the beneficiary are of little probative value. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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 petition may not be approved.

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

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appeal will be dismissed.

ORDER: The appeal is dismissed.