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

U.S. Citizenship and Immigration Services

D7

[redacted]

File: EAC 08 152 52822 Office: VERMONT SERVICE CENTER Date: JUN 12 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 employ the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner states that it is engaged in the design and manufacture of ladies garments. The petitioner has employed the beneficiary in L-1B classification since April 2003 and seeks to continue his employment in the position of director of operations for three additional years.[1]

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been and will be employed in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the beneficiary holds an important position within the U.S. company and possesses "a type of knowledge and advanced level of expertise as well as process and functions, which are markedly different from the ordinary or usual, particularly in relation to the design of apparel specifically required by Indian customers." Counsel asserts that the petitioner submitted sufficient evidence to establish the beneficiary's employment in a specialized knowledge capacity.

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.

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[1] The regulation at 8 C.F.R. § 214.2(l)(15)(ii) provides, in pertinent part, that the total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The record shows that the beneficiary was first admitted to the United States in L-1B classification on April 17, 2003. The validity of the beneficiary's most recent L-1B petition expired on March 2, 2008. Therefore, if the petitioner established that the beneficiary was otherwise eligible for the classification sought, the extension could not be granted beyond April 16, 2008, absent additional, documentary evidence of the beneficiary's absences from the United States.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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

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

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

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

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

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

The petitioner filed the nonimmigrant visa petition on April 28, 2008. The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would be employed as "Director of Operations," responsible for "management of USA operations." The petitioner stated that it has 11 employees and is engaged in the design and manufacture of ladies garments. The petitioner did not provide any information regarding the beneficiary's proposed duties in the United States on the L Classification Supplement to Form I-129, nor did it submit a statement or letter in support of the petition.

Accordingly, on June 27, 2008, the director issued a request for further evidence (RFE), instructing the petitioner to provide additional evidence in support of its claim that the beneficiary will be employed in a specialized knowledge capacity. The director requested: a copy of the petitioner's organizational chart; information regarding the number of persons holding similar positions in the U.S. company; an explanation regarding how the beneficiary's duties are different from those of other workers employed by the petitioner or other similarly-employed workers; and an explanation regarding the company equipment, system, product, technique or service of which the beneficiary has specialized knowledge.

In response to the RFE, the petitioner's vice president, submitted a letter in which he attempted to address the director's concerns. noted that the beneficiary's position requires him to utilize his

"specialist knowledge of the company's business and practices" gained as a result of his ten years of experience in the United Kingdom and United States. Specifically, he stated that such knowledge includes expertise in cost cutting, staff recruitment and development, account acquisition, customer retention, as well as "business skills to trouble shoot in areas of the petitioning company."

[redacted] described the beneficiary's proposed duties as the following:

- Apply expert knowledge gained with the UK and the U.S. company over the last 10 years to manage and oversee events in the region, to raise the petitioning company's portfolio, brand awareness and increase revenue.
- Lead joint market activities in the region to help increase the petitioning company's business results.
- Develop propositions for new vertical and horizontal markets, using the networks and contacts that he has built up whilst working both here in the U.S. and for the UK company.
- Provide strategic and competitor information to the President of [the petitioner's group]. Leading the re-structuring of the showroom and the warehouse for the petitioning company to enable for stabilization . . . .
- Identify and prioritize key business opportunities. Implement short and medium-term business development and marketing support objectives.
- Promote greater awareness of internal policies, strategies, programs, products, services and opportunities to employees of the petitioning company
- Manage and co-ordinate the production of the apparel in India in both Hindi and Punjabi.
- Liaise with the customers to develop and implement service development plans.
- Ensure staff adheres to the internal policies, methods and procedures.
- Responsible for the recruitment and interviewing of new employees and on-going staff development.

[redacted] stated that the beneficiary has gained "extensive experience and specialist expertise in all aspects of the business of clothing design and manufacture" based on his five years of employment with the U.S. company, as well as an understanding of the company's "future business strategy, products and services." In addition, he indicated that the beneficiary "has a unique and in-depth knowledge of the business techniques, management style and customers," which is vital for business growth.

The petitioner submitted an organizational chart which lists positions for both the United Kingdom and United States operations of the company. The chart does not identify any employees by name. However, it shows that the director of operations, the beneficiary's position, reports to the vice president and supervises a warehouse supervisor and warehouse team, as well as an accounts manager and accounts team.

The director denied the petition on August 26, 2008, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity requiring specialized knowledge. In denying the petition, the director acknowledged the petitioner's response to the RFE, but found that [redacted] letter was submitted without any corroborating evidence relating to the claimed specialized knowledge. The director further found that the organizational chart was deficient, as it did not identify the job duties of other employees as requested and did not assist USCIS in making comparisons between the knowledge possessed by the beneficiary and that possessed by other company employees.

On appeal, counsel for the petitioner states:

> [The beneficiary] will assume the important position of Director Operations. [He] possesses the advanced level specialized knowledge in all aspects of the business of clothing design and manufacture.
>
> Such advanced level of specialized knowledge of the business techniques, management style and customers will enhance the marketing of the petitioner's products in the competitive garment industry, particularly in the large Indian community in the greater New York area.
>
> [The beneficiary] must be intimately familiar with the organization's future business strategy, products and services, management and coordination of the production of apparel in India.
>
> The above description of [the beneficiary's] duties fully establishes that she [*sic*] possesses advanced specialized knowledge of Indian made apparel which is clearly not available in the United State[s] and, therefore, will be employed in the qualifying capacity in accordance with 8 CFR § 214.2(l)(1)(ii).
>
> Accordingly, [the beneficiary's] duties with the petitioner will be of the type that requires his advanced level of expertise and proprietary knowledge of the petitioner's product, i.e., the manufacture and production of apparel in India which expertise and knowledge are not in the current market readily available in the United States. *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982).
>
> It should be noted that [the beneficiary] possess the type of advanced level specialized knowledge and expertise that are different from the ordinary or usual, particularly in relation to the design of apparel specifically required by Indian customers. The techniques used by [the beneficiary] are definitely not readily available in the U.S. job market.
>
> In short [the beneficiary] definitely possesses a type of knowledge and advanced level of expertise as well as process and functions, which are markedly different from the ordinary or usual design and cuts available in the United States.
>
> It can be reasonably stated that the employment of [the beneficiary] is valuable and critical for the petitioner to remain competitive in the marketplace for garment and apparel primarily gears [sic] towards Indian populations in the United States.

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.

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

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

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

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner 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 operations managers employed in the apparel manufacturing industry. For example, the petitioner stated that the beneficiary has developed "business skills" for troubleshooting areas for improvement, "expertise" in cost-cutting efficiency and staff recruitment and development, and "expertise in all aspects of the business of clothing design and manufacture." Such knowledge and expertise would likely be possessed by any manager in the industry and is not specific to the petitioning company.

The record is devoid of any documentary evidence that the beneficiary's position involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. While the petitioner claims that the beneficiary utilizes specialized knowledge of the petitioner's business strategy, products, services, business techniques, management style and customers, the petitioner has not described how he utilizes this knowledge, provided evidence or otherwise described the techniques, strategies, and management style used by the petitioner's group, or

adequately explained how the beneficiary gained his claimed specialized knowledge, other than stating that he was employed by the petitioner's overseas affiliate for five years. Given that the petitioning company is more than 25 years old, it is not evident that the beneficiary's knowledge is comparatively "advanced" within the organization. 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)).

Here, the petitioner has indicated that the beneficiary possesses specialized knowledge as a result of his employment with the foreign entity, which gave him "intimate knowledge" of the company's strategies, techniques and products. However, the record contains no detailed employment history for the beneficiary, and the petitioner does not claim that he received any special training, such that the AAO could determine exactly what "special" or "advanced" knowledge the beneficiary possesses or how he acquired it. Finally, the petitioner states that the beneficiary's knowledge could only be gained by prior experience with the company abroad and that his knowledge could not easily be transferred to another employee. Again, no evidence has been submitted to support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* At 165. The petitioner indicates that merely working within the petitioner's group for a significant length of time in "various positions" is sufficient to bestow "special knowledge" or an "advanced level of knowledge." While it may be correct to say that the beneficiary is an experienced employee, this fact alone is not enough to bring the beneficiary to the level of specialized knowledge.

On appeal, counsel attempts to distinguish the petitioner's operations and the beneficiary's knowledge from that generally held in the garment manufacturing industry by noting that the beneficiary must be intimately familiar with "the manufacture and production of apparel in India which expertise and knowledge are not in the current market readily available." Counsel further emphasizes that Indian-manufactured garments are "markedly different from the ordinary or usual design and cuts available in the United States." However, knowledge of Indian garment designs and manufacturing processes is not in fact specific to the petitioning organization. It is reasonable to believe that many U.S. companies have counterparts in India which design and manufacture garments which are then imported for distribution among the Indian community in the United States. Regardless, the record contains no documentary evidence regarding the type of garments manufactured by the petitioning organization or the location of its manufacturing facilities. The petitioner is simply described as a ladies garment manufacturer with an affiliate in the United Kingdom. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Even assuming, *arguendo*, that the petitioner had submitted documentation to establish that it designs Indian garments which are manufactured in India, the petitioner has not explained how this business model would automatically impart the petitioner's employees with specialized knowledge. Based on the limited evidence in the record, it appears that the beneficiary himself is not involved in the design or manufacturing of garments, but rather, according to the petitioner's organizational chart, oversees the petitioner's warehouse manager and account manager. Therefore, it appears that his duties would be related to overseeing warehouse and account functions rather than design and manufacturing.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself will not equal "special knowledge."[3] An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled.

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 garment industry manager, in a relatively short period of time. 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.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by experienced managers in the petitioner's industry. The fact that workers outside the organization have not been exposed to the petitioner's specific processes and strategies 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 employee is not "specialized knowledge." Moreover, the petitioner has not submitted evidence that any knowledge of its products, strategies or methodologies 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. 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 within the petitioner's organization or in the industry at-large.

Therefore, based on the evidence presented and applying the statute, regulations, and binding precedents, the petitioner has not established that the beneficiary has specialized knowledge or that he has been or would be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

The AAO notes for the record that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on March 2, 2008. However, the petition for an extension of the

[3] As observed above, the AAO notes that the precedent decisions that predate the 1990 Act are not categorically superseded by the statutory definition of specialized knowledge, and the general issues and case facts themselves remain cogent as examples of how the INS applied the law to the real world facts of individual adjudications. USCIS must distinguish between skilled workers and specialized knowledge workers when making a determination on an L-1B visa petition. The distinction between skilled and specialized workers has been a recurring issue in the L-1B program and is discussed at length in the INS precedent decisions, including *Matter of Penner*. See 18 I&N Dec. at 50-53. (discussing the legislative history and prior precedents as they relate to the distinction between skilled and specialized knowledge workers).

beneficiary's L-1A status was filed on April 28, 2008, almost two months following the expiration of the beneficiary's status. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. As the extension petition was not timely filed, it is noted for the record that the beneficiary is ineligible for an extension of stay in the United States.

The AAO acknowledges that USCIS previously approved two L-1B nonimmigrant petitions filed on behalf of the beneficiary. The prior approvals, however, do not preclude USCIS from denying an extension of the 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.