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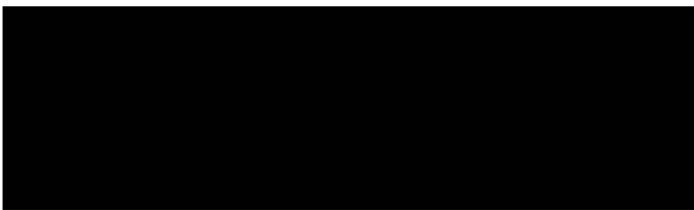
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
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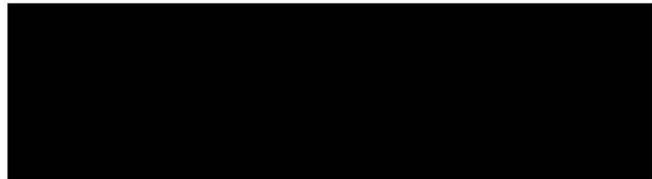
File: EAC 08 077 51548 Office: VERMONT SERVICE CENTER Date: **MAY 29 2009**

IN RE: Petitioner:  
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)

IN 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, 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, a U.S. branch of a foreign entity and provider of information technology services worldwide, filed this nonimmigrant visa petition to employ the beneficiary in the position of a SAP consultant 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 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. Specifically, the director determined that the beneficiary's knowledge of certain tools and processes is readily accessible and, therefore, cannot be deemed as specialized.

On appeal, counsel disputes the director's conclusions and submits a brief explaining his various objections to the director's findings.

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

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

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

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

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

In support of the Form I-129, the petitioner provided a letter dated January 14, 2008 in which the beneficiary's foreign and proposed positions were described. With regard to the beneficiary's employment abroad, the petitioner stated that the beneficiary was assigned to work with Agilent Technologies, one of the petitioner's client companies. In the course of his employment, the beneficiary was trained in the petitioner's core methodologies and internal tools. The petitioner claimed that the beneficiary was selected for the Agilent project because of his high level of knowledge. The petitioner emphasized the beneficiary's training in its quality management system. The following responsibilities were assigned to the beneficiary during his employment abroad:

- Overall responsibility for support delivery
- Single point contact for all issues pertaining to Support
- All customer communications, routine or exceptional
- All communications with other parties involved, including other Service Providers, relevant teams within Agilent, etc.
- Resolution of critical and urgent problems
- Execute support tasks. Eg. Master Data upload, Job Error Handling, etc.
- Monitor Interfaces/Jobs and error handling
- Resolve OVSD Tickets assigned to the respective module
- Provide Additional support to Business leads
- Provide support to the Offshore ABAP Team in development
- Perform Testing on enhancements developed in the module
- Interact with Business Users for resolution of OVSD Tickets
- Execute support tasks. Eg. Master Data upload, Job Error Handling
- Configuration changes

With regard to the beneficiary's proposed employment with the client company in the United States, the following proposed list of responsibilities was provided:

- Analyze the issue reported by the user and monitor the Ticketing system.
- Configuration changes as per the business requirement.
- Documentation of the new business process and update the knowledge portal.
- Carry out the Quality system testing and obtain the user sign off to move it to production.
- Monitor the various interfaces.
- Track the request in ECMS and update the system.
- Fill timesheets and other relevant information by providing Periodic updates to higher management in [the petitioning entity].
- Identify the areas for business process improvement.

On March 18, 2008, the director issued a request for additional evidence (RFE), instructing the petitioner to provide, *inter alia*, a more detailed description of the proprietary nature of the procedures used by the beneficiary, explaining how the beneficiary's knowledge is special or advanced compared to others in the industry or within the petitioner's organization. The petitioner was asked to provide documentation to support its response. The petitioner was also asked to explain how it has functioned thus far without the beneficiary's presence in the United States and why the beneficiary's U.S. presence is now required.

In response, the petitioner submitted a letter dated June 12, 2008 in which a number of the director's concerns were addressed. The petitioner explained that the beneficiary is trained in the company's quality management system (QMS), which is a tool used to track a project's progress through the application of the petitioner's methodologies, including the six-sigma methodology. The petitioner focused on its SEI-CMM Level 5 status as a company that has attained the highest level of quality assurance standard, which applies to a limited number of consulting companies industry-wide. The petitioner stated that not all of its employees are trained under the CMM advanced level, as not all of the projects undertaken by the petitioner require such knowledge. The petitioner described the beneficiary's job duties as follows:

[The beneficiary] uses QMS++ Methodology that includes CMM and ISO based Quality Procedures. He obtains and maintains a complete understanding of the Agilent Technologies project design in detail and determines that the client's requirements are fully understood and translated into design specifications, user manuals, technical manuals, and description of application as per [the petitioner]'s QMS++.. [sic] (Quality Management System for Six Sigma Methodology) tool. By using QMS++ Methodology, [the beneficiary] performs the following specific tasks:

Coordinating, facilitating, and Architectural design, discussion, and Modularization into coherent work packages, by driving the technical design process using QMS++-Failure Mode and Effect Analysis (FMEA) and CMM Level 5 Risk Identification. Verifying and ensuring that the design document's approach taken is in line with the [petitioner]'s architectural guidelines by QMS++ Design Analysis—Pugh Metric.

Reviewing the version controls of documentation such as design specifications, user manuals, technical manuals, description of application operation, and methodology documentation as per QMS++ guidelines. Ownership of the integrated Project Planning & Tracking, following the CMM level 3. Monitoring the QMS++ four block tools (Executive Project Review Tool) to adhere to high level Project status[.]

Responsible for capturing and tracking Software Change Request (SCR) as per [the petitioner]'s QMS++. Identify the effort required and possibility to include some SCR in the ongoing development life cycle and track SCR that are to be taken up in the next release plan of the design phase.

The petitioner focused on the beneficiary's prior experience with the Agilent Technologies project during his employment overseas and stressed that the beneficiary's experience and understanding of the petitioner's proprietary quality control tools make him essential for the proposed position in the United States. The AAO notes that the petitioner did not respond to the director's request for an explanation as to why the beneficiary must now report to the U.S. entity to carry out his job duties, how the petitioner managed while the beneficiary was employed overseas, and how the beneficiary's proposed duties differ from those performed by the petitioner's other U.S. employees. Furthermore, the petitioner did not provide documentary evidence to support any of the claims made regarding the beneficiary's claimed knowledge of proprietary tools and procedures. 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).

On July 22, 2008, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a specialized knowledge capacity.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, the petitioner argues that the beneficiary has specialized knowledge of proprietary development tools and methodologies. In support of this claim, counsel refers to the petitioner's achievement of a rating of 5 under the Capability Maturity Model for Software (CMM), which the Software Engineering Institute (SEI) administers. In turn, counsel argues that, because the petitioner trained the beneficiary to function at SEI-CMM Level 5, the beneficiary qualifies as a specialized knowledge worker.

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

Looking to the language of the statutory definition, Congress has provided U.S. Citizenship and Immigration Services (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).<sup>1</sup>

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

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<sup>1</sup> 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.

term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3<sup>rd</sup> 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, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

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

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

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products

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

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

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence submitted that 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.

In the present matter, the petitioner 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 a basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced SAP consultants employed by the petitioning organization or in the industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure*

*Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

In reviewing the petitioner's response to the RFE, the petitioner's numerous references to proprietary tools are not accompanied by the actual names of such tools or an explanation of what these tools do and how the beneficiary will apply them at the client's job site. Both the petitioner's and counsel's primary focus is on the beneficiary's prior experience in working with the client abroad and the training the beneficiary has purportedly received in various proprietary methodologies. However, as previously discussed, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. at 53.

According to both the petitioner and counsel, the beneficiary's knowledge of SEI-CMM Level 5 assessment tools qualifies the beneficiary as a specialized knowledge worker. The petitioner specifically states that it is one of a handful of companies which has achieved an SEI-CMM Level 5 assessment and further asserts that only 16% of its employees receive such training. Counsel argues that, given these facts, the beneficiary must be a specialized knowledge worker.

There is, however, no evidence in the record, such as a course certification or company training records, to establish that the beneficiary actually received SEI-CMM level 5 training or attended any of the in-house training courses that were named in the petitioner's previously submitted documents. Counsel merely asserts that the beneficiary is one of a group of information technology professionals to have received the SEI-CMM Level 5 training. Without documentary evidence to support the claim, the assertion of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As stated earlier, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Despite the RFE's specific request for corroborating evidence, the petitioner has failed to document that the beneficiary has actually received the petitioner's SEI-CMM Level 5 training or the seven other training sessions through which the beneficiary's specialized knowledge was purportedly obtained. For this reason alone, the petition may not be approved.

Counsel also refers to a 1994 Immigration and Naturalization Service (INS) memorandum as a guide for interpreting the statutory definition of specialized knowledge. Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). In the memorandum, the Associate Commissioner noted that specialized knowledge is not limited to knowledge that is proprietary, exclusive or unique, but also includes knowledge that is "different from that generally found in [a] particular industry." Counsel argues that the beneficiary's training in the petitioner's SEI-CMM Level 5 assessed software development and maintenance process puts the beneficiary in the specialized knowledge category. However, the AAO finds that the beneficiary's ability to execute Level 5 assessed software development and maintenance processes does not by itself establish that his knowledge is different from that generally found in the industry.

The Software Engineering Institute is a research and development center that offers, among other things, education and training classes organized to aid companies in determining their ability to develop and maintain their software products. *See* About the SEI, <http://www.sei.cmu.edu>. Because SEI is a voluntary training facility, any software company can purchase a report on how to perform software process assessments and train its employees in order to receive a Level 5 rating. Although it may be difficult for an organization to achieve Level 5 status, the knowledge to gain that status is widely available and can be "generally found in the industry." Counsel disputes this finding, claiming that such logic is absurd. To further his point, counsel refers to a certified public accountant's (CPA) certification as an example of something that is also widely available. Counsel's point, however, is lost, as he fails to clarify how being able to obtain CPA certification can deem someone as having specialized knowledge. Contrary to counsel's misinterpretation of the director's explanation, the mere fact that Level 5 training is widely available is not indicative of how easy or difficult it is to achieve the necessary certification. However, the high degree of difficulty in obtaining Level 5 certification does not lead to the conclusion that anyone who is able to get certified at this level possesses specialized knowledge.

Furthermore, while counsel stresses the petitioner's quality management system that has been devised in-house to ensure customer satisfaction, the petitioner has provided little information as to what this means in terms of the beneficiary's actual job duties versus the job duties of others who arguably are not employed in specialized knowledge capacities. As discussed above, in order to determine what is specialized, the petitioner must provide information about the knowledge possessed by other SAP consultants within its organization so that a comparison can be made between the beneficiary, an individual alleged to have specialized knowledge, and other employees within the petitioning entity who do not have the same level of knowledge. Here, despite having been requested to do so, the petitioner has not provided this necessary information.

Finally, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, it is noted that the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or the regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. Counsel also acknowledges such in his appellate brief, where he states that the 1994 memorandum was "intended to provide Service Centers, field offices, and the AAO *with guidance in interpreting the statutory definition of specialized knowledge . . .*" (emphasis added). Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. Moreover, USCIS memoranda do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by computer programmers generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific

knowledge of certain aspects of the petitioning organization's processes or products does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be imparted to another similarly educated and generally experienced computer programmer with relative ease is not "specialized knowledge." Moreover, the proprietary or unique qualities of vista web do not establish that any knowledge of this development tool is "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 the present matter. The fact that other workers outside of the petitioning organization may not have very specific knowledge regarding the petitioner's enterprise is not relevant to these proceedings if this knowledge gap could be closed by the petitioner simply revealing the information to a newly hired, generally experienced and educated worker.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced SAP consultant. There is no indication, however, that the beneficiary has any knowledge of the petitioning company that exceeds that of any experienced SAP consultant, or that he has received special training in the company's methodologies or processes which would separate him from any other worker employed within the petitioner's organization or in the industry at-large. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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.