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

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[redacted]

File: EAC 03 186 51706 Office: VERMONT SERVICE CENTER Date: NOV 18 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).

Perry Rhew
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 an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner is an Indian corporation with several branch offices in the United States. It provides software design services to the financial services, logistics and technology industries. The beneficiary has been employed by the petitioner in the United States since August 2002 and the petitioner now seeks to extend his L-1B status so that he may serve in the position of project leader/software engineer at its New York, New York office for three additional years.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erred by concluded that the beneficiary's proposed duties could be performed by "any trained programmer." Cousnel emphasizes that the minimum training required for the position is at least six months. Counsel further asserts that the director "completely discounted the continuous investment the petitioner has mad in the beneficiary," and its statements that the beneficiary is one of only 25 employees trained in the petitioner's mFrame flexible architecture.

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

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

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

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment

abroad with a qualifying organization within the three years preceding the filing of the petition.

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

Under section 101(a)(15)(L) of the Act, an alien is eligible for classification as a nonimmigrant if the alien, among other things, will be rendering services to the petitioning employer "in a capacity that is managerial, executive, or involves specialized knowledge." Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

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

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

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

The sole issues addressed by the director are whether the petitioner established that the beneficiary possesses specialized knowledge and whether he has been and will be employed in a capacity requiring specialized knowledge.

The petitioner filed the nonimmigrant petition on June 6, 2003. In a letter dated May 23, 2003, the petitioner described its off-shore, on-site business model for delivery of projects to United States clients. The petitioner indicated that the beneficiary joined the foreign entity in August 2001, and was subsequently transferred to the U.S. branch office in August 2002. The petitioner described the beneficiary's duties as follows:

> With experience in J2EE and related technologies, and MQ Series and MQSI technologies, [the beneficiary] will continue to direct and supervise software engineers and programmer/analysts involved in the design, development and testing of software products and work of onsite and offshore teams. He will continue to identify data objects for target system. He will continue to be responsible for requirement specifications and design documentation for the system. He will continue to work with both onsite and offshore teams to development and implement software

> products for major clients in the USA. Finally, he will continue to apply specialized knowledge of [the petitioner's] technologies, services and/or offshore development activities to ensure compliance with specifications and standards including project requirements.
>
> [The beneficiary] has been working in the field of analysis, design, development and maintenance of software applications being executed offshore. He has special knowledge of the Company's computer software production and its application in the international markets along with an advanced level of Company processes and procedures. [The beneficiary] has been given significant assignments while employed in India that developed practical and workable solutions to clients' technical and business problems. He has worked on complex projects independently and on multiple phases of a project and is well versed with [the petitioner's] process and methodologies. [The beneficiary], as with all the employees of [the petitioner], has received both on the job and classroom training in [the petitioner's] methodology and process. He has continued to work in this area in [the foreign entity] without interruption. Based upon his work experience and his attendance at in-house development course and his Bachelor's Degree, he has acquired proprietary specialized technical knowledge of the Company's processes and procedures used in the international marketplace to assist clients with new and remediation plans for various software computer systems. This proprietary technical knowledge gained through his working experience contributes to [the petitioner's] competitiveness and financial position in the international marketplace.

On June 29, 2003, the director issued a request for additional evidence (RFE) in which he instructed the petitioner to: (1) provide a more detailed description of the proprietary nature of the procedures used by the beneficiary and how knowledge of such procedures is truly special or advanced compared to knowledge commonly held in the industry; (2) identify the manner in which the beneficiary gained his specialized knowledge; (3) submit documentary evidence of the training the beneficiary received, including evidence of the duration and scope of each training session; (4) submit documentation showing the position the beneficiary occupied during his employment with the foreign entity; and (5) identify the number of L-1B nonimmigrant workers employed in the beneficiary's field in the United States and the duties they perform.

In a response dated October 20, 2003, the petitioner asserted that the beneficiary has received "both on the job and classroom training which would qualify him as a 'specialized knowledge' worker." The petitioner indicated that it operates an in-house training department, and stated that the beneficiary "has received training in three areas which distinguish him and his skills from those available generally with other software engineers." The petitioner stated that this training included: (1) three days of "MphasiS Quality Assurance Training," which covered the petitioner's quality methodology and process activities; (2) one day of training in "MIKE (MphasiS Interactive Exchange Knowledge) and Project by Net (PBN)" which gives employees "ability to use MIKE which provides employees with the resources and ability to navigate and use the knowledge management system"; and (3) one day of training in mFrame, which is described as a "proprietary tool used to customize [the petitioner's] 'flexible architecture' in implementing project by specialized knowledge workers and architects."

Counsel stated that, in addition to this training, the beneficiary worked for the company in India where he "received on the job training and implemented the training received in classrooms and workshops . . . so as to provide him with knowledge on the [petitioner's] methodology and processes and distinguish him as a 'specialized knowledge' worker." The petitioner stated that the beneficiary worked on various client projects in the financial services industry and developed "domain expertise using [the petitioner's] methodology and processes." The petitioner further explained that the beneficiary has practical experience with "Project by Net" and as a result is successfully able to navigate the requirement at the client site using the petitioner's methodology.

Counsel stated that the petitioner's software processes have received a Capability Maturity Model (CMM) Level 5 certification, and emphasized that the beneficiary "has worked hands on using these methodologies while employed by [the petitioner] and in implementing projects" in India.

In response to the director's query regarding the number of specialized knowledge workers employed by the company, counsel indicated that it employs over 1,000 software engineers worldwide and currently has 70 specialized knowledge workers in the United States. Counsel stated that all of these workers "receive training in the [petitioner's] Quality Processes and Methodologies, which is an integral part of [the petitioner's] Quality Assurance to its clients and these employees are also trained on the VTR models." Counsel noted that on-the-job training varies from project to project and is focused on the employee's domain. Counsel explained that [the beneficiary] is a specialized knowledge worker by virtue of his expertise in the area of financial domain, in addition to the specialized knowledge he has in [the petitioner's] methodology and processes."

The petitioner submitted a letter dated October 13, 2003 from global head of human resources based at the petitioner's Indian headquarters. The petitioner stated that the beneficiary is one of 25 to 30 employees who have received training in mFrame flexible architecture. [redacted]ndicated that "once they have received this classroom education and on the job training the employee is a key employee for [the petitioner] and is used for onsite projects." He further stated that only 25 out of 1,000 software developers worldwide have training and experience in the mFrame methodology.

The petitioner also provided an excerpt from a 20-page document providing an overview of mFrame architecture, a document titled "A Brief Introduction to ProjectByNet," and additional general company information.

The director denied the petition on November 18, 2003, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in a position requiring specialized knowledge. The director acknowledged the petitioner's claim that the beneficiary's training and experience with the petitioner's internal processes and methodologies, specifically, MIKE, PBN and mFrame, qualify him as a specialized knowledge worker, but noted that the beneficiary's formal training was limited to five days. The director concluded that it would take a "very short time for any qualified programmer to become familiar with these tools and methodologies." The director emphasized that knowledge that can be transferred to another qualified person is not considered to be specialized knowledge.

The director noted that software engineers working for a consulting company will reasonably develop different skills and knowledge based upon their project assignments, but found that any project-specific knowledge could not be equated to specialized knowledge. The director observed that the beneficiary "uses what is available to any trained programmer and customizes and installs it under contract to another company." The director further found that learning to use the petitioner's specific tools for project implementation does not rise to the level of specialized knowledge, and found that the primary knowledge required for the beneficiary's position is "common to any trained programmer."

On appeal, counsel for the petitioner asserts that the director erred in denying the petition and states:

> It is respectfully submitted that while the classroom training provided to the beneficiary is for short durations, the basis of qualifying the beneficiary is not limited to the classroom training. On the contrary, the petitioner hires qualified personnel and the classroom training is the beginning of the process of providing the employees with specialized knowledge and training. Given that the petitioner is a professional organization providing high end custom solutions for complex systems, the petitioner has determined that the most effective method of training the employees in its proprietary knowledge is to provide them on the job hands on training.

Counsel objects to the director's finding that "it takes only a short time for any qualified programmer to become familiar with these tools and methodologies" and asserts that, "on the contrary, once an employee is provided with the necessary classroom training, it is imperative that the employee be engaged and employed in a project whereby he uses these tools and methodologies before he can be used as a specialized knowledge employee at an onsite project location."

Counsel further objects to the director's observation that the petitioner does not develop software products for the market, noting that the regulations do not limit the visa category to employees of companies that develop commercial software products. Counsel asserts that "the specialized knowledge may exist in the unique and custom applications developed by a petitioner and the high end methodology used by the petitioner to implement custom solutions." Counsel objects to the director's conclusion that the work to be performed could be performed by any programmer, noting that only a qualified employee with six months of training would in fact be qualified for the position.

Finally, counsel asserts that the director disregarded [redacted] statement that the beneficiary "is one of 25 key employees with training and experience" in the mFrame methodology, out of 1,000 software developers employed by the petitioner's group.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring specialized knowledge.

The Standard for Specialized Knowledge

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

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

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).[1]

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

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

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

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

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

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

knowledge. While the petitioner has provided a detailed description of the beneficiary's duties, such duties are typical of a software engineer and require him to use technologies that are widely available in the industry, including MQ Series MQSI and "J2EE and related technologies." The petitioner suggests, however, that some aspects of the position require the use of the petitioner's proprietary tools and systems and therefore could not be performed by the typical skilled worker.

Therefore, the first question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools and methodologies 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. An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced

knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in the L-1B classification.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and systems development projects. These tools and methodologies are said to include MIKE (MphasiS Interactive Exchange Knowledge), Project by Net, and mFrame. The petitioner emphasizes that its quality procedures are ISO 9001 and SEI-CMM Level 5 certified, thus further setting apart its employees' knowledge from that generally possessed by similarly employed workers in the information technology industry. However, all IT consulting firms develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software qualify assurance activities. It is also industry standard practice for such companies to seek ISO 9001 and SEI-CMM assessment of their processes and methodologies. The software Capability Maturity Model is not particular to the petitioner's organization.

Other than stating that its software development processes have been given the highest rating from the Software Engineering Institute, the petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other IT companies who have also adopted and followed the software CMM. As noted above, the beneficiary received three days of training in the petitioner's quality processes and methodologies, one day of training in MIKE and one day of training in mFrame. While the petitioner claims that its employees are not considered to have specialized knowledge until they have used these tools in a project-based setting for six months or longer, the evidence of record does not establish that the petitioner's tools or procedures are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. 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)).

The AAO acknowledges the petitioner's claim that the beneficiary is one out of only 25 to 30 workers worldwide who have received formal training in mFrame. However, the petitioner provided no context on which to analyze this assertion, such as information regarding how employees are identified to receive the training or how widely mFrame is used within the company. While it may be accurate to state that the petitioner has not trained its workforce extensively in the mFrame architecture, the fact remains that training in mFrame can be completed in one day, and based on the evidence submitted, the mFrame architecture can be summarized in a 20-page document. Therefore, the fact that the beneficiary is one of a relatively small number of employees who completed the one-day formal training course in mFrame is not sufficient to establish his knowledge as specialized or advanced.

Overall, the minimal evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's processes and methodologies. The petitioner has not provided a detailed description of the beneficiary's project assignments and it is unclear when or how he received the claimed six months of "on-the-job training" in the petitioner's methodologies. The beneficiary was transferred to the United States after completing barely one year of employment with the Indian entity, and the petitioner indicated that, during that year, the beneficiary "has been given significant assignments . . . that developed

practical and workable solutions to clients' technical and business problems." The petitioner also stated that the beneficiary "worked on complex projects independently," while in India. Therefore, while the petitioner made a reference to the beneficiary's on-the-job training, there is no indication that he has not been fully performing the duties of his position since the date he was hired by the foreign entity.

Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are simply customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in software and systems development. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

The petitioner argues that the second component of the beneficiary's purported specialized knowledge is his domain knowledge in the financial services industry and project experience with the petitioner's major clients in this industry. The beneficiary's familiarity with a specific sector of the software development industry or familiarity with the petitioner's clients' systems and requirements, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that he possesses specialized knowledge. All software development employees within the petitioning organization would reasonably be familiar with its proprietary internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients or experience in developing software for clients engaged in a particular industry. However, the fact that the beneficiary possesses very specific experience with a particular international client project or projects, or domain knowledge of the financial services industry, does not establish that the beneficiary's knowledge is indeed special or advanced.

In addition, even assuming *arguendo* that the beneficiary's familiarity with the petitioner's clients' projects could be considered "specialized knowledge," it is unclear how the beneficiary, who worked for the foreign entity for barely one year prior to his transfer to the United States, is considered to have "advanced" knowledge of the petitioner's processes and methodologies relative to any particular client project or to the financial services industry at large.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to a specific client project or a specific domain 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 educated or experienced employee.

Overall, the petitioner's argued standard for specialized knowledge is overbroad and untenable, since it would allow the petitioner to transfer any employee with a few days of formal classroom training, six months of "on-the-job training," and six months project experience to the United States in the L-1B classification. All of the petitioner's software engineers would reasonably have received similar training, and the petitioner has not differentiated what separates "specialized knowledge" software engineers from those who do not possess

specialized knowledge, other than the six months of work experience. However, by itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *Matter of Penner*, 18 I&N Dec. at 53. The terms "special" or "advanced" must mean more than experienced or skilled. Specialized knowledge requires more than a short period of experience, such as six months, otherwise "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by similar workers generally throughout the industry or 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 and unparalleled 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." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have the same level of training or experience with the petitioner's MIKE, PBN, and mFrame methodologies 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 educated or experienced employee.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills demonstrate that he possesses knowledge that is common among software engineers in the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. Accordingly, the appeal will be dismissed.

The AAO acknowledges that the beneficiary was previously issued an L-1 classification visa pursuant to the petitioner's Blanket L petition and admitted to the United States in L-1B status. The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate

burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). USCIS does not have access to the beneficiary's prior L-1 visa petition approved by the U.S. Consulate in Bombay. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. 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.

ORDER: The appeal is dismissed.