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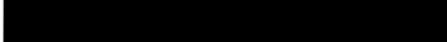


U.S. Citizenship
and Immigration
Services

D7



File: WAC 08 252 51852 Office: CALIFORNIA SERVICE CENTER Date: **NOV 18 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

The petitioner filed this nonimmigrant visa petition to employ the beneficiary 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, an information technology consulting and application development company incorporated in the State of Delaware, states that it is the parent company of the beneficiary's foreign employer located in India. The petitioner seeks to employ the beneficiary in the position of solutions consultant for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director observed that the petitioner had not demonstrated how the beneficiary's knowledge is special compared to similarly-employed workers in the IT consulting industry at large, or how his knowledge can be considered advanced within the petitioner's workforce.

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, the petitioner asserts that the beneficiary's specialized knowledge stems from his conceptualization and development of a Microsoft Dynamics AX/CRM tool that is unique to the petitioning organization. The petitioner asserts that the beneficiary is needed in the United States to provide demonstration, implementation and training services associated with the rollout of the new product and that he is uniquely qualified to perform such duties. The petitioner submits a brief and additional evidence in support of the appeal.

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

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

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

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

The sole issues addressed by the director are 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 September 24, 2008. The petitioner stated on Form I-129 that the beneficiary will serve in the position of solutions consultant in the United States. In a letter dated September 22, 2008, the petitioner explained its need to fill the position with an employee of its Indian subsidiary:

[The petitioner] has built capabilities in providing ERP services to mid-level financial services organizations. [The petitioner] is an approved vendor and authorized to resell Microsoft Axapta. There is a significant surge in the need for Axapta services amongst [the petitioner's] clients and prospects. To increase our capabilities in the delivery of Axapta services (a) we have trained several of our US employees and (b) we need to augment that with experience[d], certified employees from our India office.

The petitioner stated that the beneficiary is "a qualified Axapta Professional" and "a crucial part" of project teams that are responsible for implementing ERP systems for the petitioner's clients, and upgrading clients' systems from earlier versions of Axapta. The petitioner stated that the beneficiary will perform the following duties in the United States:

- perform requirements collection & analysis
- perform systems design
- perform functional design and communicate requirements to the technical team
- lead functional teams

- help estimate the effort, schedule and cost of an engagement

The petitioner provided evidence of the beneficiary's educational and professional qualifications, which included a Master of Business Administration degree, a Bachelor of Engineering degree in mechanical engineering, and Microsoft Dynamics AX 4.0 professional certifications in the Production and Human Resources Management modules. The beneficiary was awarded his Microsoft Dynamics AX certifications in November 2007 and February 2008, respectively. The petitioner summarized the beneficiary's qualifications as follows:

[The beneficiary] is an excellent employee to fulfill the requirements of his professional position. He has more than 3 years of commercial IT experience. We feel that his academic background, training and certifications uniquely qualifies him to assume this position within a business computing environment, functioning at a professional level in assessing business and system needs and implementing these. We anticipate that this background will enable him to assist [the petitioning company] in better assessing clients' needs and implementing computer technology such as Microsoft Axapta, based on a complete understanding of business ramifications of systems changes and their effects.

The petitioner submitted the beneficiary's resume in which he indicates that he has one year of ERP experience in MS Dynamics AX 4.0, and two years of "diversified experience in material planning, vendor development, inventory control and logistics" in the Automobile-OEM sector. The beneficiary indicates that he has been employed by the petitioner's foreign subsidiary since August 2007, performing the following duties:

- Evaluate and document business processes and conduct business process gap analysis studies
- Assemble, assess and analyze information and assist technical consultants in understanding the design document which is necessary to translate business requirements into systems engineering specifications
- Participate in design and review sessions with representatives from the client, development staff, business analysis team, quality assurance team, usability/documentation team, etc
- Review test designs, test cases and other relevant test documents prepared by the SQA team based on the business requirements
- Reviewing the configuration and implementation documentation serving as part of the project deliverable to the client.

The beneficiary indicates that the key product on which he worked during his assignment was "MS Dynamics AX 4.0." He identified three external clients, but did not describe his any specific projects on which he worked. The beneficiary does not mention that he has conceptualized or developed commercial products for the petitioning company, or that he has otherwise worked on any internal projects.

The director issued a request for additional evidence (RFE) on October 17, 2008, in which she requested additional evidence regarding the beneficiary's qualifications, the claimed specialized knowledge, and the nature of the work to be performed in the United States. Specifically, the director requested, *inter alia*, the following: (1) more detailed descriptions of the beneficiary's current and proposed positions, including an explanation regarding any special or advanced duties, and, specifically, how the beneficiary's duties are different from those performed

by similarly employed workers within the petitioning organization and other employers in the industry; (2) a detailed explanation of exactly what is the equipment, system, product, technique, research or service of which the beneficiary has specialized knowledge; (3) a description of a specific project in which the beneficiary has been involved that enhanced the employer's productivity, competitiveness, image or financial position, including an explanation of the beneficiary's role in the project; (4) an explanation regarding how the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known in the field; (5) if applicable, an explanation regarding the training the beneficiary will provide in the United States; and (6) information regarding the number of persons at the intended U.S. location who hold the same or similar positions.

In a letter dated November 28, 2008, the petitioner emphasized that it is a "certified Gold Partner for Dynamics AX (previous Microsoft Axapta)" and has a license to sell and implement Dynamics AX for North America. The petitioner describes itself as "a leading implementer of Dynamics AX" with expertise in the finance and accounting, trade and logistics, production planning, shop floor control, projects, human resources, customer relationship management, production builder, professional services, AX installation and configuration, and AX design and development modules.

The petitioner further described the beneficiary's qualifications as follows:

[The beneficiary] has broad understanding, experience and expertise in all the above areas. His particular areas of specialization, however, are Production Planning, Shop floor Control, and Human Resources. As an expert in these three areas and as a trained Project Manager, [the beneficiary] has been the major contributor to external client implementation projects as well as two products developed in house in India for the North American Market: SyncAX™ and RecruitAX™. SyncAX is the only integrated product to synchronize Microsoft CRM with Microsoft Dynamics AX. RecruitAX adds significant recruitment and resourcing functionality to Dynamics AX. . . . [The beneficiary's] contributions to [the foreign entity] directly resulted in the success of several projects. His leadership in functional analysis, design and project management is a significant contributor to the excellent Dynamics AX team built in India. His experience in Dynamics AX projects, his insight into Dynamix AX functional analysis, his depth o[f] knowledge in Human Resources, Shop Floor Control and production Planning will be invaluable to the US Dynamics AX team and will fill a niche that needs to be filled.

The petitioner further stated that the beneficiary "has continued to train other consultants offshore on specific topics and is considered a subject matter expert in Dynamics AX production module," and is also developing training materials for new features and upgrade processes for AX 2009. The petitioner explained that its current workforce is assigned to different projects and is unable to devote the time required to obtain the necessary training and knowledge in Dynamics AX.

The petitioner noted that the beneficiary would be responsible for "coordinating the internal and client functional team in designing, documenting, configuring and developing a business solution based on Microsoft Dynamics AX/CRM products," and noted that "the responsibilities of the Consultant vary depending on [the petitioner] and client requirements, the level of [the petitioner's] involvement with the client and the Consultant's area of expertise."

The petitioner further discussed the beneficiary's qualifications as follows:

[The beneficiary] has hands on experience in Purchasing, Logistics, Production Planning and Inventory Control. His involvement in setting up a new automotive plant has gained him sufficient Project Management experience. His MBA in Supply Chain Management . . . has given him the knowledge of Australian industries. Experience in multiple ERP products is a rare skill helping him and the organization in new product development. All the above mentioned points make him [a] unique employee from the existing workers employed in this type of position.

The petitioner stated that it currently employs only five consultants with Dynamics AX 4.0 production module experience worldwide and that the beneficiary is one such employee. The petitioner indicated that it is actively recruiting in the United States to keep up with its clients' demands for Dynamics AX 4.0 services, but is in need of "new experienced resources to obtain more business in the United States." The petitioner concluded by stating that it requires the beneficiary's expertise to train its U.S. based employees in AX 2009 new features and upgrades.

The petitioner's response to the RFE included a document titled: "AX 2009: New Features and Upgradation Process" which is "presented by" the beneficiary. Finally, the petitioner submitted organizational charts for the U.S. and foreign entities. In India, the beneficiary is one of four solutions consultants assigned to the "Dynamics AX Functional Team." In the United States, the beneficiary would join a team consisting of three technical consultants and three solutions consultants. The petitioner indicates that the beneficiary will work in its Scottsdale, Arizona office, which has a staff of 15 workers. The petitioner indicates that it has not previously filed an L-1B classification petition, but it does employ 8 H-1B workers as technical consultants, solutions consultants and systems architects in Scottsdale, Arizona.

The director denied the petition on December 8, 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 claim that the beneficiary is considered a subject matter expert in the Dynamics AX production module, but found insufficient evidence to establish that the beneficiary's knowledge of this technology is comparatively "advanced" compared to others in the petitioner's organization who hold the same job title, or in the industry at large, particularly since the petitioner claims to have extensive experience in implementing Dynamics AX projects across multiple domains.

On appeal, the petitioner asserts that the denial was based on a misinterpretation of facts. The petitioner reiterates the company's background and emphasizes its status as a Microsoft-certified Gold Partner for Dynamics AX. The petitioner emphasizes that the beneficiary "was the solutions consultant who conceptualized and developed [SGX SyncAX] in its entirety along with other technical team members." The petitioner discusses the application of SGX SyncAX as a tool that allows data synchronization between Microsoft Dynamics AX and Microsoft CRM within companies that utilize both systems.

The petitioner indicates that the beneficiary's duties in the United States will relate primarily to the implementation of SGX SyncAX, and notes that it plans to extend the product to its prospective clients in 2009. The petitioner states that the beneficiary's duties in the United States will include the following:

- Perform and Document Processes
- Perform and Document Gap/Fit Analysis
- Perform and Document Gap Resolutions
- Perform and Document Description of Interfaces
- Perform and Document Infrastructure Assessment
- Proposal Management
- Project Scope Statement
- Project Plan
- Contract Management
- Design, documentation, coding, security and localization
- Capability to be deploy[ed] and support
- Scalability and upgradeability, including service packs.

In addition to the above mentioned implementation process, [the beneficiary] is solely responsible for:

- Training and Implementing SGX SyncAX
- Perform Demonstration – SGX SyncAX
- Cross Train Customer – SGX SyncAX
- Demonstrate customer interface skills
- Document Customer Specific needs and upgrade the basic SGX SyncAX

The petitioner also states that SyncAX is developed by the petitioner and that there are "no resources available in the market at this time." The petitioner emphasizes that "to perform integrations and develop solutions using Microsoft Dynamics AX and Microsoft CRM, one has to be an expert in the product." The petitioner notes that the beneficiary was certified in Microsoft Dynamics CRM 4.0 Applications on August 29, 2008, and now holds a Microsoft Dynamics AX 4.0 certification in the Trade & Logistics module, issued on September 22, 2008.

The petitioner concludes by stating that the beneficiary is needed in the United States to lead the roll out and implementation of SGX SyncAX in the United States, and that "failure to demonstrate the right design and implementation methodology to our prospective customers will adversely affect our future growth."

In support of the appeal, the petitioner submits the technical design document for SGX SyncAX, which was authored between November 2007 and February 2008 by the beneficiary and three other employees of the foreign entity.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary possesses 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).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 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

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.

questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." See H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

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

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

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. In other words, specialized knowledge generally requires more than a short period of experience;

otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

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

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

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

In this case, the petitioner's description of the beneficiary's proposed job duties has undergone a noticeable, but unexplained, evolution if one compares the proposed job duties submitted at the time of filing to the proposed job duties submitted on appeal. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

At the time of filing, the petitioner indicated that the beneficiary has 13 months of experience in implementing and upgrading ERP solutions for the companies' clients, emphasized his educational credentials and Microsoft Dynamics AX certifications, and indicated that he was being transferred to the United States due to a "significant surge in the need for [Microsoft Dynamics AX] services." The petitioner noted that it had already trained U.S. employees in Microsoft Dynamics AX but noted that it would require additional experienced, certified employees to meet current demands. The petitioner did not mention any specialized body of knowledge specific to the petitioning organization of which the beneficiary possesses specialized or advanced knowledge, or otherwise articulate any basis to support a claim that the beneficiary has been or would be employed in a specialized knowledge capacity. Nor did the petitioner attempt to distinguish the beneficiary's role and knowledge from that of any other similarly employed solutions consultant employed by

the petitioning organization or in the industry at-large. While knowledge of Microsoft Dynamics AX technologies is clearly valuable to the petitioning organization, such knowledge is of course available outside the organization and proprietary to Microsoft. Similarly, the beneficiary's professional background and domain knowledge in production planning, inventory, logistics, and supply chain management, derive from his prior work experience and formal university education, and not from his training and experience with the petitioning organization. Even if the petitioner established that the beneficiary's educational and professional background are uncommon or noteworthy within the petitioning organization, such traits cannot form the basis of a claim that he possesses specialized knowledge specific to the company.

Furthermore, the petitioner did not identify with specificity what constituted the beneficiary's specialized knowledge or how or when the beneficiary gained the claimed specialized knowledge. The beneficiary joined the foreign entity in August 2007, 13 months before the petition was filed. During that 13-month period, the beneficiary completed a total of four Microsoft Dynamics certifications. The petitioner does not indicate that the beneficiary received any company-specific training from the petitioning company regarding its internal methodologies, technologies, or processes, nor has it provided information regarding how specialized knowledge is typically acquired within the company. Rather, it appears that the petitioner has adopted Microsoft's "Sure Step Methodology" for implementation of Microsoft Dynamics AX 4.0 projects and has not developed its own processes for project delivery. Therefore, based on the petitioner's initial statements, it was not established that the beneficiary possesses knowledge of technologies or methodologies that is materially different from any other consultant specializing in Microsoft Dynamics AX implementations.

In response to the director's RFE, the petitioner expanded the beneficiary's proposed position in the United States to include provision of training in implementing new features and upgrades in AX 2009. However, the petitioner has not documented when or where the beneficiary himself received training in AX 2009, explained why he was chosen to provide such training, or indicate why such duties were not mentioned at the time of filing. The petitioner also mentioned for the first time in response to the RFE that the beneficiary had contributed to the development of the petitioner's integration tool, SGX SyncAX, but did not indicate at that time that the beneficiary would be performing duties related to this product in the United States.

Now, on appeal, the petitioner indicates that the beneficiary "conceptualized and developed the [SGX SyncAX] tool in its entirety," and states that the primary purpose of his transfer to the United States is to implement this product and provide product training and demonstrations for the petitioner's and customers' staff. The AAO does not discount the fact that the beneficiary's name appears on the SyncAX technical design document and is not alleging that the petitioner misrepresented the beneficiary's involvement in designing the tool. However, the AAO finds it reasonable to question why the petitioner did not mention the newly described proposed activities prior to the denial of the petition if the true purpose of the transfer is to further develop and implement a company-specific product of which the beneficiary possesses advanced knowledge. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted above, the petitioner initially indicated that the beneficiary was being transferred to the United States to assist with an increased client demand for Microsoft Dynamics AX consulting services, not to lead the implementation and rollout of a new company product or to train United States staff. Furthermore, the

AAO notes that the beneficiary indicated in his resume that he worked on three external client projects during his 13-month tenure with the foreign entity. There is no mention of any special or advanced duties, or any indication that he was responsible for developing training materials or conceptualizing new commercial products for the petitioning company.

Furthermore, the fact that the beneficiary was involved in the development of SGX SyncAX is not necessarily indicative of his possession of advanced or specialized knowledge specific to the petitioning company. The record shows that the beneficiary joined the foreign entity on August 19, 2007. At the time he was hired by the foreign entity, it appears that he had no prior experience with Microsoft Dynamics AX 4.0 or Microsoft Dynamics CRM. Nevertheless, he was assigned to work on the development of a tool to integrate these two products in November 2007, just three months after joining the foreign entity, and before he had completed a single Microsoft Dynamics AX 4.0 certification. According to the Technical Design Document submitted on appeal, the design specifications are based on functional requirements defined in a document referred to as "SGX SyncAX BRD_V1.13.doc." The petitioner did not provide a copy of this document as evidence that the beneficiary "conceptualized the product in its entirety." Regardless, given the beneficiary's limited experience with both the petitioning company and with Microsoft Dynamics AX and CRM technologies at the time he participated in the development of the SyncAX tool, the AAO cannot conclude that the duties he performed were particularly complex or involved the application of specialized knowledge that is specific to the petitioning company. The tool itself is designed exclusively for integrating two Microsoft platforms that are widely used and supported across many industries. The petitioner has not indicated whether other Microsoft partners offer similar integration tools to their clients who utilize Microsoft Dynamics AX and CRM technologies. Nor does the record establish that implementation of the tool will be particularly complex or that the petitioner's employees would require extensive training in this regard.

The petitioner has not clearly articulated what in its view constitutes "specialized knowledge" or "advanced knowledge" or how its employees typically gain such knowledge. It cannot be determined that the beneficiary possesses any training or experience not provided to or possessed by other consultants employed within its organization. Based on the limited explanation provided by the petitioner, it appears that the company's consultants may possess different functional and domain knowledge in order to allow the company to provide services to a diverse client base, and therefore, may possess training and certifications in different modules within the Microsoft Dynamics AX platform.

Absent some further explanation as to what exactly constitutes the beneficiary's specialized knowledge, how he gained that knowledge, how the knowledge is specific to the petitioner's products and interests, and how the beneficiary's training or experience differs significantly from other employees within the petitioner's organization, the petitioner has not persuasively established that the beneficiary's knowledge of the petitioner's processes and procedures can be considered "advanced" compared to similarly employed workers within its international organization. All employees can be said to possess unique skills 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 a specific aspect of the petitioner's Microsoft Dynamics AX consulting services is not enough to establish the beneficiary as an employee possessing specialized knowledge. While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among

a small subset of workers, (i.e., one of only five employees who have received a Microsoft professional certification in the Dynamics AX production module) will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce. The fact that the company chooses to maintain a limited number of employees qualified to implement specific Microsoft Dynamics AX modules is not sufficient to establish that the beneficiary's knowledge of the *petitioner's* processes and procedures is comparatively "advanced." The petitioner has made no attempt to differentiate the beneficiary's knowledge of the company's methods, policies and procedures from that possessed by its other consultants.

Therefore, the petitioner's claim that the beneficiary's knowledge of Microsoft Dynamics AX 4.0 production module is scarce within the company and that the beneficiary possesses such knowledge is not persuasive in establishing that the beneficiary possesses specialized knowledge. The record does not contain persuasive evidence to establish that knowledge of any aspect of Microsoft Dynamics AX 4.0 is scarce, either within the petitioning company or within the industry, or that it is not possessed by workers employed by Microsoft and other companies who work with Microsoft technologies. Even if the beneficiary's specific expertise is relatively rare within the petitioning organization, the beneficiary's familiarity with Microsoft technologies and their application to client projects, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that the beneficiary possesses specialized knowledge.

It is appropriate for USCIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of LeBlanc*, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." However, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company. If all similarly employed workers within the petitioner's organization receive essentially the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes or products. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes or products gained during 13 months of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As discussed, the claimed specialized knowledge relates almost exclusively to knowledge of technologies developed by Microsoft. Even if such knowledge could be considered specialized knowledge specific to the petitioning organization, the AAO notes that the beneficiary is claimed to be an "expert" in areas in which he completed training just weeks prior to the filing of the

petition. For example, the beneficiary received his Microsoft Dynamics CRM 4.0 Applications certification in August 2008, and his Microsoft Dynamics AX 4.0 Trade & Logistics certification two days prior to the filing of the petition, on September 22, 2008. Given that the petitioner is a Microsoft Certified partner in Microsoft Dynamics AX technologies and is considered a leading implementer in this field, it is reasonable to believe that the petitioner employs workers who have much broader and deeper experience with these technologies in comparison to the beneficiary.

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."² 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. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

The AAO does not dispute the possibility that the beneficiary is a skilled 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 workers employed by the petitioning organization or by workers who are similarly employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among consultants in the information technology consulting field, and that the knowledge he possesses is available to other consultants who choose to complete the same Microsoft training. 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.

² 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).

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.

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.