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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D7

File: EAC 08 249 50577 Office: VERMONT SERVICE CENTER Date: OCT 20 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 seeking 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, a commercial airline carrier with branch offices in the United States and abroad, seeks to employ the beneficiary in the position of international shift manager for a period of three years, based at its branch office in Charlotte, North Carolina.[1]

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or will be employed in a capacity involving 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 overlooked or ignored material evidence that establishes the beneficiary's eligibility as an employee possessing specialized knowledge and applied an improper standard by requiring that the petitioner establish that the proffered position is a "specialty occupation." Counsel further argues that the director failed to following binding USCIS policy guidance set forth in a 1994 legacy Immigration and Naturalization Service (INS) memorandum.[2] Counsel submits a brief in support of the appeal.

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

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

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

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

---

[1] The petitioner stated at the time of filing that the beneficiary will work at its Philadelphia, Pennsylvania branch.

[2] *See* Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Special Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum").

(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.

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 22, 2008. The petitioner stated that it seeks to employ the beneficiary in the position of international shift manager based in Philadelphia, Pennsylvania.[3] In a letter dated September 12, 2008, the petitioner described the beneficiary's proposed duties as follows:

> This position has responsibility for ensuring compliance with [the petitioner's] international flight policies and procedures and requires specialized knowledge of the company's international policies and procedures. She will be responsible for overseeing international shift supervisors, who in turn oversee international customer service agents, and will assure that subordinates are trained and comply with [the petitioner's] international policies and procedures.
>
> [The petitioner] has specialized procedures regarding international flights. Examples of [the petitioner's] specialized international operating processes and procedures include processes for

[3] The petitioner referred to the beneficiary's proposed job title as both "international shift manager," and "customer service manager," in its letter dated September 12, 2008.

> check-in procedures (including compliance with international government requirements, such as APIS, Travel documentation, Customs and Immigration), procedures for handling overbooking on international flights, procedures for handling international flights with unaccompanied minors, procedures for ticketing through [the petitioner's] customized international reservations systems, procedures for baggage when bags are checked but customer does not appear for flight, and flight departure, etc. She will also oversee vendor supervisors who are responsible for catering and cleaning the aircraft with international flights, who in turn oversee subordinate vendor employees. She will resolve escalated international customer service issues, and implement and enforce international policies and procedures. She will evaluate international customer service supervisors and personnel, determine overtime needs based on operational requirements, coordinate training for [the petitioner's] customized international reservations systems and international processes and procedures, and inform agents regarding international policy and procedure changes.

The petitioner stated that the beneficiary worked from December 2004 until September 2008 at its branch office in Guatemala City, Guatemala, where she held the position of Station Manager, performing the following duties:

> As Station Manager, [the beneficiary] manages all aspects of the daily operations of the airline and has discretionary authority over the day to day operation and management of [the petitioner's] station in Guatemala. She manages the entire operation of [the petitioner] in Guatemala, including supervising the ticket counter, gates, ramp, catering, security, back office accounts. She oversees the operation through direct supervision of vendor supervisors, who in turn supervise vendor employees. [The beneficiary] is responsible for ensuring that the Guatemala station operates within the established budget and for maximizing revenue opportunities. She approves any outgoing expenses on a day to day basis.
>
> *In particular, she is responsible for ensuring compliance with [the petitioner's] international operating processes and procedures and assuring that the entire staff at the Guatemala Station is trained on these procedures.* For instance, she is responsible for training vendor supervisors and employees on compliance with international government requirements for international travel, such as APIS, travel documentation, Customs and Immigration. She is also responsible for training and ensuring compliance with [the petitioner's] procedures for handling overbooking on international flights, procedures for handling international flights with unaccompanied minors, procedures for ticketing through [the petitioner's] customized international reservations systems, procedures for international baggage check in and flight departure.

With respect to the beneficiary's qualifications, the petitioner stated:

> [The beneficiary] is uniquely qualified for this position on the basis of her extensive work experience with [the petitioner]. She has worked with [the petitioner] for over three years. Because [the beneficiary] has been employed as the Station Manager in Guatemala for more than three years, she has advanced knowledge of the company's international processes and procedures. She has gained invaluable knowledge of the company's international processes and

> procedures and transfer of this knowledge is critical to preserve the market position of [the petitioner] in the U.S.

On September 26, 2008, the director requested additional evidence, including, *inter alia*, the following: (1) copies of organizational charts for the foreign and U.S. entities; (2) information regarding the number of L-1B employees transferred to the U.S. location within the past 12 months; (3) the number of persons holding similar positions at the beneficiary's proposed work location; (4) an explanation regarding how the beneficiary's current and proposed duties are special or advanced or otherwise different or unique from those of other workers employed by the petitioner and other U.S. employers in similar positions; (5) a detailed explanation of exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge; (6) an explanation as to how the beneficiary's training or experience is "exclusive and significantly unique" compared to that of others employed by the petitioner or others employed in the same field; and (7) a detailed description of the training the beneficiary will provide to U.S. workers, if applicable.

The director further noted that the initial evidence did not clearly state what specialized knowledge the beneficiary possesses, or establish that the breadth of the beneficiary's knowledge is different from that ordinarily encountered in her field. The director also emphasized that the beneficiary's knowledge of the petitioner's processes and procedures alone would not be sufficient to establish her eligibility unless the petitioner demonstrates that such knowledge is substantially different from that possessed by others working in the same field.

In response to the director's request, the petitioner provided a 14-page letter dated November 7, 2008, in which it discussed the company's history, its relatively recent expansion in the area of international flight offerings, regulatory compliance issues impacting international flights originating from the United States and abroad, and the petitioner's internal efforts to increase compliance with international regulations in order to reduce fines and violations. The letter also included a footnote on the second page stating: "The original petition erroneously listed [the beneficiary's] proposed worksite as Philadelphia. However, the correct worksite is Charlotte, North Carolina. We apologize for this administrative oversight."

The petitioner discussed specific U.S. Customs and Border Protection and U.S. Department of Agriculture requirements impacting international flights, and the fines that may result from regulatory violations. The petitioner noted that the company requires "highly trained and knowledgeable managers and related personnel on international matters to reduce the possibility of fines for current international flights." The petitioner further stated that the personnel will be needed as part of a planned expansion of international routes, and to account for regular seasonal increases of flights on existing routes.

In discussing the need for the beneficiary's services in particular, the petitioner stated:

> Since 2006, [the petitioner] has paid $199,000 in fines for violations of various U.S. Customs and Border Protection Regulations. The Company has also been fined by similar departments from foreign countries.
>
> [The petitioner] has evaluated various options to reduce the potential for significant fines. Initially, the company requested that International Consultants on Targeted Security ("ICTS")

> provide an estimate for the cost of development of an intensive training program for international shift managers, international shift leads and international customer service agents on international regulation and [the petitioner's] international policies and procedures. ICTS provided a proposal to supply training to international shift managers, shift leads, and agents, for $2000 per location.
>
> Because [the petitioner] has approximately 200 locations, the projected annual cost of the training would be $400,000. Since this training was cost-prohibitive, [the petitioner] did not pursue this option. In comparison, [the beneficiary's] current salary is $36,000.
>
> Instead, [the petitioner] has elected to transfer [the beneficiary] to the U.S. in the International Shift Manager role to enhance the Company's international training program on international procedures for international shift managers, leads and customer service agents. This program will be called the International Management Training Program. This expanded training program is important given that the company recently announced the addition of new international routes and regularly increases service on a seasonal basis on already existing international routes. The training program currently consists of an intensive two-month period of shadowing an experienced shift manager and meeting the expectation to learn international policies and procedures through various materials presented by the station. [The beneficiary] will be enhancing the written materials by generating more comprehensive written training materials that can be given to newly hired international training managers in Charlotte. The company anticipates that [the beneficiary] would incorporate these fortified written materials into a more intense training program to be implemented in Charlotte. [The beneficiary's] augmented written materials along with an enhanced training program can then serve as models for training at all company stations that handle international flights. Fortifying the written materials and training program are especially necessary now in light of the company's expanded business opportunities in international markets.
>
> Although [the beneficiary] will also be responsible for the core functions of the International Shift Manager position . . . . the expansion of the International Management Training Program will be her primary focus. Initially, [the beneficiary] will present the enhanced written materials and expanded training to the international team at the Charlotte, North Carolina location. If successful, the training module will be extended to the 200 other [company] locations.

The petitioner stated that there are currently six international shift managers working at the company's Charlotte, North Carolina location, and the beneficiary will be the seventh. The petitioner reiterated the core duties of the position, as stated in its original letter dated September 12, 2008. The petitioner stated that the beneficiary's assignment to the position is "unique in that the company normally promotes employees from its domestic staff." The petitioner stated that that the beneficiary will "not require extensive training on international procedures" in contrast to the usual new international shift managers, but rather will be "generating enhanced and comprehensive training materials for the company's international processes and procedures and teaching it to her co-workers."

The petitioner further stated that the Charlotte, North Carolina-based international personnel will receive materials and training that will "increase their knowledge on the Company's specialized international operating processes and procedures." The petitioner described the specific areas of training as the following:

> Compliance with international government requirements, such as APIS, WHTI Travel documentation; Customs and Immigration. . . ; procedures for handling overbooking on international flights (which is heavily monitored by the Department of Transportation); procedures for handling international flights with unaccompanied minors; procedures for ticketing through [the petitioner's] customized international reservations systems; procedures for security issues related to baggage when bags are checked but customer does not appear for flight; flight departure and more.

The petitioner explained that the beneficiary is more qualified than the current Charlotte-based international shift managers to develop the proposed training program because she is the only one who has previously served as a station manager at a foreign outpost. The petitioner emphasized that the beneficiary was the highest-level employee at her location and, in that role, "supplemented the company's international policies," which were subsequently adopted by other Latin American stations. The petitioner also noted that the beneficiary had experience in training others, including the Belize station manager, with respect to company policies.

The petitioner further emphasized that the policies and training implemented by the beneficiary during her tenure in Guatemala City "were highly successful as demonstrated by the fact that no fines were imposed" on the station during the beneficiary's tenure. The petitioner noted that there was one international regulatory violation in which a passenger attempted to smuggle contraband into the U.S. through a vehicle tow bar. The petitioner noted that the beneficiary created and implemented an anti-smuggling policy in response to the incident, and that she will be the only international shift manager who possesses such experience.

The petitioner went on to address the beneficiary's qualifications under the regulatory definition, noting that the beneficiary's '"advanced level' of knowledge and expertise of [the petitioner's] International Policies and Procedures qualifies her as a 'specialized knowledge' employee." The petitioner stated that "under the Puleo memo's definition of 'advanced,' there can be no question that [the beneficiary's] expertise in breadth and scope of [the petitioner's] international policy are 'at a higher level than others' and 'greatly developed beyond the initial stage.'"

The petitioner further stated that the beneficiary meets several sample characteristics of a specialized knowledge employee as set forth in the Puleo memorandum, including possession of knowledge that is valuable to the employer's competitiveness in the marketplace, and significant assignments abroad which have enhanced the employer's productivity, competitiveness, image or financial position.

In this regard, the petitioner stated that "enhanced training will result in even more efficient operations, better public relations, and increased reservations from passengers," as well as lead to hundreds of thousands of dollars in reduced fines, once the training program is implemented nationwide. In addition, the petitioner stated that the beneficiary's responsibility for "running the company's entire Guatemala City operation is clearly a significant assignment," and that the beneficiary's record of compliance with international procedures and lack of governmental fines "enhanced the company's competitiveness, image and financial position."

Citing to the Puleo memorandum, the petitioner stated that the beneficiary possesses knowledge of a process or product that would be difficult to impart to another individual without significant economic inconvenience," as she "has a mastery of the Company's international policies which is unique." The petitioner once again stressed that, as a former station manager, her position "required much more familiarity with international policy than a domestic Shift Manager position would." The petitioner further stated:

> [The petitioner] estimates that it would take at least one year to train a US Shift Manager on international policy, to equal that of [the beneficiary's.] [The petitioner] estimates that it would take much longer to get an individual to the stage where they could enhance policy, an area in which [the beneficiary] has already proven herself quite capable. Finally, [the beneficiary] is available due to the closing of the Guatemala City Station where she remains to close out the business there. To use a different employee would require taking another Station Manager away from his or her post, providing them with additional extensive training and finding a replacement for their position. . . . If [the beneficiary] is not placed in this position, there is a very real likelihood that the training program on international policies will not be enhanced as quickly and not move forward as planned.

The petitioner explained the "Anti-Smuggling Policy" the beneficiary implemented during her tenure as station manager, which involved a special inspection procedure implemented to ensure that customers could not smuggle drugs or other items from Guatemala using "tow bars." The petitioner stated that the beneficiary also developed and implemented "other major international policies," including: the Airport Security Program; the Manual Check-in Program, the Security Program (tow bar) and Baggage and Gate Procedure Program. The petitioner concluded as follows:

> There can be no doubt that [the beneficiary] possesses the advanced knowledge of [the petitioner's] international policies and procedures that qualifies her as a specialized knowledge worker. She is not just a line worker, or even a manager, with a working knowledge of company policy. She is a master of [the petitioner's] international policy and procedures which allows her [to] supplement and implement Company policy effectively. Her advanced ability in this area is what makes her so valuable to [the petitioner]. It's [the beneficiary's] unique abilities that allow [the petitioner] to confidently place her in a position in Charlotte to further develop Company training policies and materials on international matters which ultimately may become a model for all to use.

In support of its response to the RFE, the petitioner submitted a number of supporting documents, including: (1) USDA Compliance Agreement for Charlotte, NC Hub; (2) Charlotte Aircraft International Flight Clearance Procedures for Customer Service Agents; (3) Charlotte, NC International Customs Arrival Procedures; (4) the petitioner's International Inbound Expedite Baggage Procedure; and (5) a "Proposal for Support in Fine Prevention for [the petitioner's] Flights from the US to Europe," prepared for the petitioner by ICTS Europe in January 2007.

The petitioner also submitted copies of policy and procedure documents issued by the beneficiary during her tenure as station manager of the petitioner's Guatemala City location, including: (1) Procedures for flights

departing Guatemala to United States of America; (2) Manual Flight Procedure; and (3) General Security Procedure.

The petitioner submitted an organizational chart of its Latin American operations. The beneficiary is depicted as the manager of the Guatemala station, supervising a "United Supervisor," an "LAATS Supervisor," and a total of 42 vendor employees designated as "Ramp" and "Customer Service." The petitioner also submitted a U.S. organizational chart, which indicates that the beneficiary would join the Charlotte, North Carolina branch's existing staff of six international shift managers, who supervise 23 international leads and 165 customer service agents, and report to the "senior manager, international."

The director denied the petition on November 14, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a position requiring specialized knowledge. The director noted that based on the position description submitted, it did not appear that the beneficiary's duties would be significantly different from those performed by any employee working in the international shift manager position. The director further found that any employee working in a similar position would reasonably be expected to be "knowledgeable in the workings, requirements and regulatory constraints facing the airline." The director determined that "the fact that the beneficiary may be versatile, deemed a good trainer, and readily available does not satisfy the criteria of the classification."

The director further found that the petitioner failed to provide requested "training records, educational requirements, organizational charts and position comparisons" to further "depict the nature and stature of the position." The director noted that "assertions that the beneficiary is familiar with the duties, has worked for the affiliated company, and is the cheaper way to fill the position do not speak to the regulatory requirements." The director emphasized that there is no evidence in the record identifying the amount of in-house training required for the international shift manager position.

In addition, the director observed that "many thousands of people work in very similar duties through the world in the field of transportation," and that it is expected that "job training at any company will provide employees with knowledge about the procedures that are germane to that organization." The director concluded that the petitioner had not documented "how the beneficiary's knowledge of the processes and procedures of [the petitioner's] organization are substantially different from, or advanced in relation to, any individual similarly employed." Finally, the director acknowledged the petitioner's reliance on the Puleo memorandum in support of its claim that the beneficiary qualifies as a specialized knowledge worker. The director stated that the memorandum is guidance for USCIS personnel and not treated as a precedent decision in the adjudicative process.

On appeal, counsel for the petitioner asserts that the director failed to follow the Puleo memorandum describing specialized knowledge in the L-1B context. Counsel emphasizes that "the Puleo Memo has been incorporated in to the Adjudicator's Field Manual and is therefore binding USCIS policy guidance." Counsel asserts that the evidence submitted "clearly establishes that [the beneficiary] has an advanced level of expertise and knowledge of the company's international processes and procedures." Counsel asserts that binding policy requires the approval of the petition.

Counsel further asserts that the director's decision contains erroneous statements of fact which establish a failure to conduct a review of the evidence submitted in response to the RFE. Counsel notes that the director denied the

petition, in part, based on the petitioner's failure to submit "training records" and "position comparisons" that were never requested, and based on an incorrect observation that the petitioner failed to submit requested organizational charts and educational records.

In addition, counsel contends that the director failed to consider material facts included in the RFE response, which led to the erroneous conclusion that the beneficiary will not be performing duties that are significantly different from those of any employee working in the international shift manager position. Counsel further asserts:

> [The beneficiary's] job is significantly different from the other International Shift Managers because she is the only one who will create a more comprehensive training program. She is the only one who will create the International Management Training Program. . . .
>
> Part of [the beneficiary's] specialized knowledge of the company's international processes and procedures was gained while working as station manager for the company's Guatemala City operations. In fact, her knowledge of the company's international processes and procedures is so extensive that, while there, she created additional international policies to handle location and region-specific issues. . . . Moreover, [the beneficiary] is fluent in English, Spanish, German and Italian, which is a huge advantage in communicating with both passengers and foreign officials.

Counsel contends that the director has mischaracterized the beneficiary's role as that of a "trainer," thereby overlooking the fact that the beneficiary will be "tasked with creating a comprehensive training program for the Company on a nationwide basis." Counsel asserts that the beneficiary "is exactly the type of 'key' person and managerial personnel that is envisioned by the L-1B category."

Counsel concludes by stating that the position the beneficiary has been offered "is not one that has fungible duties which can be filled by another worker with a few months of training," but rather is a position which "requires an individual with extensive knowledge of international policies and someone who has previously created effective international policies."

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

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).[4]

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 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

---

[4] 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.

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 burden to prove that an alien possesses "special" or "advanced" knowledge by a preponderance of the evidence. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). The inherently subjective standard serves to make the L-1B classification more flexible and capable of responding to changing economic models. Depending on the facts of the specific case, a petitioner may put forward a novel argument that is based on the employer's specific situation. Or, as in the present case, a knowledgeable petitioner may choose to rely on aspects of the INS memoranda to frame his or her argument. Even though, as addressed further below, the Puleo memorandum does not constitute a binding legal "standard," it does describe possible attributes that would support a claim of specialized knowledge. However, the petitioner would be unwise to simply parrot the memorandum, without submitting supporting evidence, and expect USCIS to approve a petition. Or, as observed in the Puleo memorandum:

> . . . a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Pursuant to section 291 of the Act, the petitioner bears the burden of proof in these proceedings. The petitioner must submit relevant, probative, and credible evidence that would lead the director to believe that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). 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.

The AAO will now turn to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge. Upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The decision of the director will be affirmed as it relates to this issue and the appeal will be dismissed.

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

Here, the petitioner's assertions are undermined by unresolved inconsistencies in its description of the beneficiary's intended employment. At the time of filing, the petitioner asserted that the beneficiary would be employed as an international shift manager at its Philadelphia station, performing duties that are standard to the position, including overseeing shift supervisors, ensuring compliance with policies and procedures, overseeing catering and cleaning vendors, resolving customer service issues and implementing and enforcing international policies and procedures. There was nothing in the petitioner's initial evidence to indicate that there was any other purpose for the beneficiary's proposed transfer apart from filling an open international shift manager position. The petitioner stated that the beneficiary is qualified for the position based on her experience with ensuring compliance with the company's international operating processes and procedures and government requirements for international travel.

In response to the request for evidence, the petitioner stated that the beneficiary will be assigned to its Charlotte, North Carolina hub and that the primary purpose for her transfer is to create and develop a comprehensive "International Management Training Program," which, if successful, will be implemented nationwide. If the primary purpose of the beneficiary's position is to develop a training program for the Charlotte, North Carolina airport personnel, it is unclear why the petitioner initially stated that the beneficiary will perform the typical international shift manager duties at the Philadelphia airport. Other than stating in a footnote that the petitioner provided incorrect information regarding the proposed worksite due to an "administrative oversight," the petitioner has provided no explanation for the significant changes made to the initial job offer. 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). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. 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).

Therefore, despite counsel's assertions to the contrary, there was nothing in the petitioner's initial representations that would have suggested that the beneficiary's proposed position is in fact significantly different from that of other international shift managers. If the development of a nationwide training program is in fact the primary purpose for the beneficiary's transfer, it is reasonable to believe that the petitioner would have conveyed this information at the time of filing. The only documentary evidence submitted to establish that the petitioner intends to implement the international training in its Charlotte station is the proposal from ICTS Europe, dated January 2007, which addressed a proposed pilot program targeting fine prevention on flights from the United States to European destinations. The AAO acknowledges the petitioner's assertions that the ICTS proposal was deemed to be cost-prohibitive, but it is noted that the instant petition was filed

approximately 20 months later, in September 2008. The claim that the beneficiary is being hired primarily to provide essentially the same training as proposed by ICTS is not adequately substantiated in the record. 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)).

Furthermore, even if the AAO accepted without reservation the petitioner's claims that the beneficiary is being transferred to the United States to enhance or create an international management training program, the AAO notes that the evidence of record does not establish that the position actually requires a specialized or advanced knowledge of the petitioner's existing international processes and procedures. This conclusion is based on the petitioner's claim that it had intended to outsource this very same function to a third-party consulting company rather than developing the training program and materials internally. A review of the ICTS proposal reveals that the consultants intended to pre-design all international procedures and would adapt them to the petitioner's specific needs over the course of the four-week training program. Therefore, the evidence suggests that international flight procedures and training in such procedures can be developed with little or no existing knowledge of the petitioner's internal processes and procedures with international flights.

Overall, the petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced international shift managers employed by the petitioning organization or in the industry at-large. All passenger airlines handling international traffic are necessarily required to develop processes and procedures to ensure day-to-day compliance with the many different government entities regulating international flights. Based on the petitioner's representations, it appears that individual branches of the petitioning company develop their own location-specific procedures, based on the particular needs and characteristics of the specific hub. Nevertheless, the petitioner has not identified any qualities or characteristics of its international processes and procedures that would significantly distinguish the petitioner's processes from those implemented by other airlines. If the knowledge is comparable to that possessed by other international shift managers working for the petitioner or other airlines, mere familiarity with the petitioner's international policies and procedures will not rise to the level of specialized knowledge. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner claims that the beneficiary's advanced knowledge of the company's policies and procedures is derived from her approximately four years of experience in the position of station manager of the petitioner's Guatemala city branch, and emphasizes that none of the other international shift managers working at the Charlotte branch have such experience. While the AAO finds it reasonable to believe that the petitioner does not regularly transfer station managers from abroad to serve as international shift managers in the United States, the fundamental questions to be answered are whether the beneficiary holds an advanced level of knowledge regarding the petitioner's international policies and procedures based on her experience as a station manager and whether such knowledge is actually required for the U.S. position.

The AAO notes that the evidence of record contains no information regarding the beneficiary's employment history prior to her assumption of the position of station manager for the petitioner's Guatemala City branch

when it opened in December 2004; however, there is nothing in the record to suggest that she was employed by the petitioner prior to that date. Therefore, it is evident that the beneficiary was hired to be the station manager of a new branch notwithstanding the fact that she had no absolutely no prior experience with the petitioner's internal policies or procedures. This fact raises further questions as to whether the petitioner's internal policies and procedures are significantly different from those implemented by any airline, given the heavily regulated nature of the industry. The petitioner has not established that knowledge of its international policies and procedures alone constitutes specialized knowledge

The AAO acknowledges that the beneficiary implemented several international flight policies and procedures specific to the petitioner's Guatemala City hub. However, as noted above, she was able to do so with no specific training or previous experience in the petitioner's own internal policies and procedures, and thus it cannot be concluded that the beneficiary possesses, or that her most recent position required, advanced knowledge that is specific to the petitioning company. The petitioner has not established how the processes and procedures developed for the Guatemala City hub, a branch with only one to three direct employees and forty or so vendor employees, with all departing international flights destined for Charlotte, would be directly translatable to the much larger and busier Charlotte hub, which has flights destined for various international locations. A review of the organizational charts for the Charlotte and Guatemala City hubs reveals that the two branches have different organizational structures, with no equivalent "station manager" position in the U.S. organization. While the beneficiary may have been the senior employee in Guatemala City, the U.S.-based international shift managers would reasonably have substantial experience, and likely a broader and more diverse experience, with departing and arriving international flights. Therefore, the beneficiary's previous experience developing local procedures for international flights in Guatemala, while valuable, has not been shown to constitute specialized or advanced knowledge that is required for the U.S. position. The petitioner no longer offers flights to Guatemala. Regardless, as discussed above, the AAO is not persuaded that developing an international management training program is the primary purpose for the beneficiary's transfer to the United States, given the omission of this claim at the time the petition was filed.

Based on the foregoing, it cannot be concluded that the beneficiary's knowledge of the petitioner's international policies and procedures is truly "specialized" or that her knowledge of such procedures is "advanced" compared to her similarly-employed peers within the petitioner's international organization or among persons serving in international shift manager positions for international passenger airlines in general.

All employees can be said to possess unique skills or experience to some degree. Moreover, any 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 specific process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. 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., the only international shift manager who served as a station manager overseas) will not be deemed facially persuasive if the petitioner does not define with specificity what constitutes the beneficiary's specialized knowledge and how the beneficiary gained it. Although the petitioner asserts that the company will be unable to implement the international management training program if the instant petition is not approved, it has not provided any basis for deeming the beneficiary as the sole person among its staff of 36,600 employees who is capable of implementing such a program.

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. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

The petitioner has not demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during her nearly four years of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced based on her stature as station manager in Guatemala City are unpersuasive.

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."[5] 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

---

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

beneficiary's knowledge as more advanced than the knowledge possessed by other similarly employed workers within the petitioning organization or by workers who are similarly employed elsewhere. The beneficiary's duties and skills, while impressive, demonstrate that she possesses knowledge that is common among airline supervisors working in international flight operations. 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 passenger airlines operating within the same regulatory constraints governing international flight operations. 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.

Finally, regarding the petitioner's reliance, in part, on the Puleo memorandum, it must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that USCIS is bound to base its decision on the above-referenced Puleo memorandum, the memorandum was issued as guidance to assist USCIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memoranda accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.[6]

---

[6] USCIS memoranda articulate internal guidelines for agency personnel; they do not establish judicially enforceable standards. Agency interpretations that are not arrived at through precedent decision or notice-and-comment rulemaking - such as those in opinion letters, policy statements, agency manuals, and enforcement guidelines - lack the force of law and do not warrant *Chevron*-style deference. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir. 1987)). Agency policy memorandum and unpublished decisions do not confer substantive legal benefits upon aliens or bind USCIS. *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1024 (9th Cir. 1985); *see also Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004).

In contrast to agency memoranda, a legacy INS or USCIS decision is binding as a precedent decision once it is published in accordance with 8 C.F.R. § 103.3(c). **The INS precedent decisions relating to L-1B** specialized knowledge are considered "interpretive rules" under the APA. *See Spencer Enterprises, Inc. v. U.S.*, 229 F.Supp.2d 1025, 1044 (E.D.Cal. 2001), *aff'd* 345 F.3d 683 (9th Cir. 2003); *see also R.L. Inv. Ltd.*

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 she 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.

Partners v. INS, 86 F.Supp.2d 1014 (D.Hawaii 2000).