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File: EAC 08 118 52028 Office: VERMONT SERVICE CENTER Date: SEP 02 2009

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, 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 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 New Jersey-based information technology company, claims to be a subsidiary of the beneficiary's foreign employer located in India. The petitioner seeks to employ the beneficiary in the position of PDM Specialist for a period of two 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. The director denied the petition, in part, based on the petitioner's failure to describe and document any special training the beneficiary received during his twelve months of employment with the foreign entity.

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 petitioner explained that the beneficiary "has not received any extensive training" and that the beneficiary's specialized and advanced knowledge derives primarily from his experience working on a specific project for the petitioner's client and claimed affiliate, Cummins, Inc. in India. Counsel 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.

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

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

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

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

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

The petitioner filed the nonimmigrant petition on March 19, 2008. In a letter dated February 18, 2008, the petitioner described the beneficiary's employment with its foreign parent company as follows:

[The beneficiary] has been employed at [the foreign entity] for approximately year (from March 2007 to the present) in the capacity of System Administrator for the PDM Infrastructure project. In this capacity, he has worked primarily on Installation of Server, Packages, Patches; Installation of new software; websphere administration; Management of file systems and permissions; management of users and group accounts; monitoring of H/W and OS level logs and errors; and maintenance and troubleshooting of servers. He is being transferred to the US to continue to work on the PDM Infrastructure Project. . . .

\* \* \*

Since commencing employment with [the foreign entity] he has worked on the PDM Infrastructure project. Thus he has the required and necessary specialized and advanced knowledge of this project, required for the position at Cummins, Inc. in the US as an employee of [the petitioner]. He is being transferred because of this specialized and advanced knowledge of this project.

The petitioner described the beneficiary's proposed duties as the following:

In the capacity of a PDM Infrastructure Support Specialist, [the beneficiary] will continue to provide full time technical and support for the PDM (Product Data Management) application. He will be providing this support to the Engine Business Unit ("EBU") of Cummins, Inc. His duties will include on-site coordination of on-site coordination and off-shore resources; and troubleshooting using Solaris Script & WebSphere administration. He will also assist in splitting the project into modules for transmission to and execution by the off-shore team. He will also provide post-implementation support.

The petitioner explained that the projects it undertakes for client and affiliate companies are substantially executed at its facilities in India, while some project activities, such as project scoping, design, manpower and cost estimation, on-site coordination, production support, liaison, production configuration and integration are performed in the United States. The petitioner further explained the purpose of the transfer as follows:

Hence we transfer to the USA, some of our professional overseas employees, who have a thorough knowledge of our mechanisms, availability of in-house knowledge and resources, specialized analysis, design, execution and delivery methodologies and mechanisms and also have specialized and advanced knowledge of specific projects and/or clients and/or the domain. These employees also have an advanced knowledge of our structure and of the professional employees of various teams. [The beneficiary] is has [*sic*] specialized and advanced knowledge of the project and is coming to the US to work on the same project. Hence he is the most appropriate candidate. Since we are the primary service provider for IT, ERP and SOX compliance we have a team stationed at Cummins, Inc. and [the beneficiary] will be reporting to and working directly under the supervision of our on-site manager.

Since we are SEI-CMM Level 4 company, the work is performed following the quality processes pursuant to these standards. [The beneficiary] will assume direct responsibility for compliance with this standard. He will also be involved in project coordination, feasibility, metrics collection, resource allocation, and manpower planning.

The petitioner submitted a copy of the beneficiary's resume, in which he indicates that he has performed the following duties as a System Administrator since joining the foreign entity in March 2007:

- Installation of Server, Packages & Patches
- Installation of new instances.
- WebSphere Administration.
- **Manage file system & permission.**
- Users and group account management
- Monitoring Hardware and OS level logs and errors.
- Troubleshooting and maintenance of Servers.

Prior to joining the foreign entity, the beneficiary completed a bachelor's degree in electronics and telecommunications engineering, and worked for nearly three years as a system administrator and project leader

with a different foreign company. The beneficiary indicates that his technical skills include Unix Systems Administration, with experience in installation, upgrades, configuration, maintenance, patch/package management and troubleshooting operating systems, application software, and services.

The director issued a request for additional evidence (RFE) on May 5, 2008, in which he advised the petitioner that the initial evidence did not sufficiently document how the beneficiary obtained his specialized knowledge or how the beneficiary's knowledge is advanced or noteworthy compared to similarly employed workers in the industry in general and within the petitioning organization. The director requested training records to establish the amount and type of training the beneficiary has completed during his 12 months of employment with the foreign entity. The director also instructed the petitioner to: (1) indicate the minimum amount of time required to train an employee to fill the proffered position in the United States, how many workers are similarly employed, and how such workers' training compares to the beneficiary's training; (2) submit a statement discussing the type of training (both formal education and in-house training) needed for an individual to adequately perform the duties of the proposed position; (3) identify when the beneficiary was able to perform the duties of his position after joining the foreign entity in March 2007; and (4) provide evidence of how long the beneficiary has worked on the specific project in India and a timeline indicating the beneficiary's role and duties since being assigned to the project.

In addition, the director requested a list of other employees working on the specific client project in the United States and abroad, and a breakdown of the roles and associated duties for each worker on the project.

In a letter dated July 18, 2008, the petitioner reiterated the beneficiary's current and proposed job duties and stated:

As mentioned earlier, Cummins, Inc. is a part-owner of [the foreign entity] and hence is an affiliate. We provide substantial IT support to Cummins, Inc. and its affiliates. [The beneficiary] is coming to the USA to continue to work on a family of projects that are the same or similar to the project he is currently working on. His specialized and advanced knowledge is of this family of projects and of the professionals working on these projects. This knowledge would be difficult to import to another individual without significant economic inconvenience to [the petitioner], [the foreign entity] and Cummins, Inc.

The petitioner submitted a U.S. organizational chart labeled "Project Team Structure" which shows the beneficiary's proposed position as a member of a three-person team reporting to an on-site project manager. The beneficiary's title is identified as "Consultant, System Support – Ematrix." One other team member has the same title, while the third employee is listed as "Consultant, System Support – Pdmlink."

In a letter accompanying the petitioner's response, counsel for the petitioner asserted that the beneficiary's "specialized and advanced knowledge" of the family of projects for Cummins, Inc. would be difficult to impart to another individual without significant economic cost and inconvenience to the United States or foreign firm, and therefore qualifies as specialized knowledge pursuant to a 1994 legacy Immigration and

Naturalization Service policy memorandum, and a subsequent 2002 memorandum on the interpretation of specialized knowledge.<sup>1</sup>

On August 4, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director emphasized that the petitioner failed to submit the requested evidence documenting the amount and type of training the beneficiary received while employed by the foreign entity and the manner in which he gained his specialized knowledge. The director emphasized that "[t]his evidence was requested specifically to provide the opportunity to show that the beneficiary holds specialized knowledge and that he held such knowledge for the required period." The director noted that the beneficiary, who was employed for the foreign entity for no longer than 12 months at the time of filing, "must have gained the specialized knowledge within the year prior to the filing date of your petition," and if so, "would not qualify for L-1B nonimmigrant status."

On appeal, counsel for the petitioner reiterates his argument that the beneficiary possesses specialized and advanced knowledge of a Cummins, Inc. project that would be difficult to impart to another individual without significant economic cost and inconvenience to the U.S. and foreign firms. Counsel further states:

[T]he employer has provided the evidence of the Beneficiary's specialized and advanced knowledge. Unfortunately, the Service seems to believe that the requirement is one year of experience prior to joining the overseas employer (?). The one year of required experience has to be prior to the application for admission and neither at the time of filing the petition nor at the time of applying for a visa – as the plain language of the statute and the Definition section of regulations clearly state. [The beneficiary] joined the employ of [the foreign entity] approximately 18 months ago.

Counsel further asserts that the petitioner provided all required information in its response to the RFE "explaining once again that [the beneficiary] has not received any extensive training during his employment at [the foreign entity]." Counsel states that, in response to the RFE, the petitioner submitted "two letters and one letter from the overseas parent company, providing details on the duties of the employment and responding to the other queries."<sup>2</sup> Counsel emphasizes that "the Service has not provided any rationale or evidence to doubt the authenticity of these letters or the authenticity of the facts as stated in the letters."

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<sup>1</sup> See Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Special Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum"); Memorandum of Fujie Ohata, Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (Dec. 20, 2002)(hereinafter "Ohata memorandum").

<sup>2</sup> The AAO notes that the petitioner's response to the director's RFE included: (1) a cover letter from counsel dated July 18, 2008; (2) a letter from the petitioning company dated July 18, 2008; (3) a list of nonimmigrant workers working for the petitioner in the United States; (4) a proposed organizational chart depicting the project team to which the beneficiary would be assigned; and (5) a copy of the 2006-2007 Annual Report for the petitioner's parent company. The response did not include a second letter from the petitioner or a letter from its parent company.

In a letter dated September 4, 2008, the petitioner states:

Your concern is the overseas experience requirement should be such that prior to [the beneficiary] joining the employ of [the foreign entity] he must have specialized and advanced knowledge. Actually, your concern is misplaced. [The beneficiary] joined our employ and his specialized and advanced knowledge have been gained during the one year of his employment with us overseas. In our experience, it takes anywhere from 6 months to 2 years of working on a specific project to be considered as having the necessary amount of specialized and/or advanced knowledge of the project to be transferred to the USA to continue to work on that project. [The beneficiary] joined the employ of the overseas parent . . . in March, 2007.

The petitioner further addresses the beneficiary's training as follows:

You keep asking us for training records and we have explained to you that [the beneficiary] has not received any extensive training during his employment at [the foreign entity]. His specialized and advanced knowledge derives from the fact that he is currently working on the project for Cummins that he is being transferred to continue to work on. It would be cost prohibitive to us to hire an IT professional and then train him on this project.

The petitioner stated that there are no classes, programs or facilities available for training a newcomer to the project, and therefore, the petitioner would have to transfer a new hire to India for a year to work on the project at a cost of \$100,000 to \$250,000.

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

#### *The Standard for Specialized Knowledge*

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

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

*1756, Inc. v. Attorney General*, 745 F.Supp. 9, 14-15 (D.D.C., 1990).<sup>3</sup>

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

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

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3<sup>rd</sup> ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *See* H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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<sup>3</sup> Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

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.

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).

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

The petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced system administrators employed by the petitioning organization or in the industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990). The petitioner failed to articulate, with specificity, the nature of the claimed specialized knowledge.

The petitioner claims that the beneficiary's knowledge is derived from his approximately 12 months of experience acting as a system administrator for the PDM Infrastructure Project, providing technical support for Cummins, Inc.'s Engine Business Unit. The petitioner indicates that the beneficiary performs his duties using commercially available technologies such as Solaris Script and WebSphere, and does not claim that his specialized knowledge derives from any company-specific methods or procedures for software or systems development or project management. Rather, the petitioner does suggest that the beneficiary's knowledge should be considered specific to or proprietary to the petitioning company because Cummins, Inc. is "affiliated to" the petitioner and its parent company, and is not a mere client.

The petitioner's claim that it is an affiliate of Cummins, Inc. is not corroborated by any documentary evidence of the purported corporate relationship. The petitioner merely states that Cummins, Inc. is a part-owner of its parent company. 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)). According to the petitioner's annual report for 2006-2007, Cummins, Inc. owned 13.35 percent of the petitioner's shares and was not the largest individual shareholder of the company. As of March 31, 2008, Cummins, Inc. owned an 8.22 percent interest in the petitioner's parent company.<sup>4</sup> This does not establish an affiliate relationship as that term is defined for the purposes of this nonimmigrant visa classification (*see* 8 C.F.R. 214.2(I)(1)(ii)(L)), nor does this level of common ownership create a situation in which products that are proprietary to Cummins, Inc. would also be deemed proprietary to the petitioner or its parent company. It is evident that Cummins, Inc. does outsource many information technology functions to the petitioner and its parent company and that the petitioner's employees thereby have access to Cummins proprietary product and

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<sup>4</sup> See [http://www.kpitcummins.com/downloads/Shareholding%20pattern\\_Mar\\_31\\_08.pdf](http://www.kpitcummins.com/downloads/Shareholding%20pattern_Mar_31_08.pdf) (accessed on August 24, 2009).

systems information. However, such knowledge cannot be considered specific to the petitioning company, and knowledge of such products or systems cannot be considered "specialized knowledge."

Thus, while counsel argues that the beneficiary's familiarity with the client's proprietary products and systems should be considered knowledge that is specific to the petitioner's interests and therefore "specialized," the AAO notes that such an interpretation would essentially open the classification to any information technology consultant who worked on any client project with on-site and off-shore components for at least one year. Again, the beneficiary's familiarity with the client's systems and requirements, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that he possesses specialized knowledge. All information technology consultants within the petitioning organization would reasonably be familiar with its internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients. However, the fact that the beneficiary possesses very specific experience with a particular international client's project does not establish that the beneficiary's knowledge is indeed special or advanced.

In addition, even assuming *arguendo* that the beneficiary's familiarity with the client's systems or products could be considered "specialized knowledge," relative to the petitioner, it is unclear how the beneficiary, who has worked as a team member on a single project for the client for approximately 12 months, is considered to have "advanced" knowledge of the petitioner's processes and methodologies relative to Cummins Inc. projects. The petitioner has not provided any details regarding the specific project that would distinguish the beneficiary's role from those performed by any systems administrator. As noted above, the duties include installing, troubleshooting and maintaining servers, monitoring hardware and operating systems logs and errors, and WebSphere Administration. The petitioner has not identified how the skills needed to perform these duties would require specialized knowledge relative to either the petitioning company or the project. Again, 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 and explain how and when the beneficiary gained such knowledge.

Furthermore, the AAO notes that the petitioner initially stated that the beneficiary would continue to work on the PDM Infrastructure Support Project in the United States, but, in response to the RFE, indicated that he would work on a "family of projects that are the same or similar to the project he is currently working on." The organizational chart submitted in response to the request for evidence shows the beneficiary providing system support for "Ematrix," a project or product on which he has no documented prior experience. The petitioner provided no explanation regarding the beneficiary's designation as an Ematrix system support consultant and the AAO cannot conclude that this is the same or a similar project requiring the experience he gained with the foreign entity. 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)).

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 unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this

**matter.** The fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to one component of a specific client project, or the same level of knowledge of a client's own proprietary products or systems, 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 several systems administrators or consultants assigned to a client project team) 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. Here, the petitioner states that it considers all employees with six months to two-years of experience on a specific project to have specialized or advanced knowledge.

In this case, the petitioner has not articulated any basis that would support a finding that the beneficiary's knowledge is advanced. The petitioner asserts on appeal that it would take at least one year of work experience in India to prepare a newly hired U.S. worker to perform the beneficiary's proposed duties as a PDM Specialist in the United States. However, the petitioner acknowledges that the beneficiary has received no specific formal or on-the-job training upon joining the company in either the petitioner's internal processes or procedures or in the subject matter related to his project assignment. Despite his lack of company-specific training or experience, the beneficiary was hired by the foreign entity and immediately assigned to the role of systems administrator on the Cummins, Inc. PDM Infrastructure Project, performing the same duties that are proposed in the United States.

This fact directly undermines the petitioner's claims. The petitioner states that its employees are not required to undergo any extensive training in the company's processes and methodologies. There is no indication that the beneficiary has not been fully performing the duties of the position since the date he was hired by the foreign entity, which raises questions regarding the complexity of the claimed specialized knowledge as it relates to the client's project. 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). Further, since it appears the beneficiary was able to assume such a role on the Cummins Inc. project with no prior work experience within the company, or experience with the client's products, then it is reasonable to question to what extent the knowledge required to perform the duties is truly specific to the petitioning organization, and not general knowledge the beneficiary gained through his education or prior work experience as a systems administrator with an unrelated company. Based on the evidence submitted, it is evident that any company-specific knowledge required to perform the proposed job duties can be readily learned on-the-job by employees who otherwise possess the requisite technical background in systems administration.

In addition, it is not clear from the record how long the petitioner has been providing PDM infrastructure support services for Cummins, Inc.'s Engine Business Unit, such that the beneficiary's 12 months of experience on the project could be considered relatively "advanced." There is no evidence that the beneficiary holds a senior role within the project team or any other basis to determine that the beneficiary's knowledge is advanced as a result of his work experience.

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 successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during his 12 months 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 relative to a specific client project are unpersuasive. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's tools and processes for implementing projects. By the petitioner's logic, any of them would qualify for L-1B classification if offered a position working on the same project in the United States.

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."<sup>5</sup> 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.

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<sup>5</sup> 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).

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 people employed by the petitioning organization or by workers who are similarly employed elsewhere. The beneficiary's duties and technical skills demonstrate that he possesses knowledge that is common among systems administrators. 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.

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 and Ohata memoranda, the memoranda were 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.<sup>6</sup>

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<sup>6</sup> 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 CIS. *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 he has been or would be employed in a capacity involving specialized knowledge.

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.