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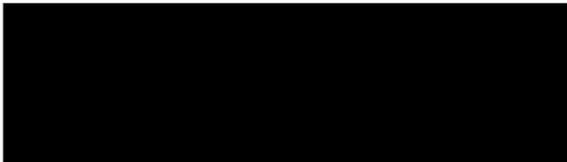
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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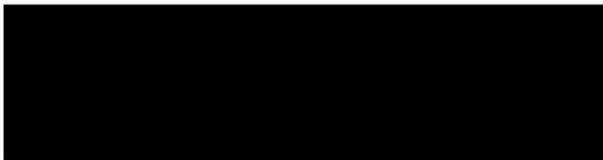


File: WAC 07 253 50469 Office: CALIFORNIA SERVICE CENTER Date: SEP 03 2009

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 petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a provider of information technology consulting and development services. The petitioner claims to be a subsidiary of Tech Mahindra Limited, located in Mumbai, India. The petitioner seeks to employ the beneficiary in the position of "Telecom Testing Consultant" for a three-year period, and indicates that he will be working primarily at the worksite of an unaffiliated employer in San Ramon, California.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, the petitioner disputes the director's findings and asserts that the beneficiary meets the standard for classification as a specialized knowledge worker. Counsel contends that "the applicable regulations and the Service memoranda clearly establish that the knowledge of processes and/or products etc. qualifies as 'specialized knowledge' if it would be difficult to impart it to another individual without causing an economic inconvenience to the firm." Counsel further argues that the director made a distinction in his decision between "high" and "low" levels of specialized knowledge that is not supported by the regulations or applicable agency memoranda. Counsel submits a brief in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), 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 and seeks to enter the United States temporarily in order to continue to render his or her 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.

Here, the sole issue addressed by the director is whether the beneficiary possesses specialized knowledge and whether he has been and will be employed in a capacity requiring specialized knowledge. Upon review, the AAO concurs with the director's decision to deny the petition.

The nonimmigrant petition was filed on August 28, 2007. In a letter dated August 23, 2007, the petitioner explained that the U.S. company and its Indian parent provide Business Support System (BSS) and Operation Support System (OSS) products and services primarily to the telecommunications industry. The petitioner indicated that the beneficiary would perform the following duties:

As a Telecom Testing Specialist, [the beneficiary] will be responsible for functional as well as non-functional testing of the Light Speed Order Management System that we have designed and developed for our client AT&T and makes available state-of-the-art functionalities that manage

order workflow, provisioning, negotiation, notification, customer management, contact management and pricing catalogues for telecom service providers.

This process mandates an in-depth knowledge and understanding of and experience with our proprietary telecommunications switching, customer service, billing and network transportation platforms, our underlying coding conventions and protocols as well as our proprietary customizations to the BSS and OSS architecture that applies to the telecom line of business. In addition, the Telecom Testing Specialist must also be proficient in the use of AT&T frameworks and various functional and non-functional testing technologies, including manual and automated testing, regression testing, black box and white box testing, smoke testing and system testing technologies. The telecom Testing Specialist must also be familiar with and understand the interaction of these cutting edge functional and non-functional testing technologies . . . with our proprietary customizations to the BSS and OSS architecture as well as our proprietary development tools such as the COBOL Maintenance Workbench and the ShoreCan tool. Specifically, [the beneficiary's] responsibilities will include:

- Engaging in meetings and consultations with the AT&T design and development teams to establish project specifications, including establishing development and testing estimates for our AT&T project engagement. This process requires knowledge and understanding of and experience with our proprietary coding conventions and protocols, our standardized procedures governing our unique on-site/off-shore development model, our proprietary SQA guidelines to capture and analyze user requirements as well as the interaction AT&T frameworks and cutting edge functional and non-functional testing technologies. . . .
- Prepare test strategy, test plans & scenarios, develop test specifications and use knowledge and understanding of and experience with our proprietary Service Delivery Framework – mASTER – to design and develop flow/design documents and to determine which specifications get transmitted to the off-shore team, including the format in which this information is transmitted.
- Engage in change and impact analysis, conduct quality review and walk-thrus, perform unit integration and system testing and scheduling releases of various processes involved in the software development lifecycle, all of which require an understanding of our proprietary project planning, execution and implementation methodologies as well as adherence to our proprietary system, regression, non-functional and production validity testing standards. Further, knowledge of our proprietary coding conventions and protocols, our standardized procedures governing our unique on-site/off-shore development model, our proprietary SQL processes is also crucial to the performance of the above duties.
- Use his knowledge and experience with database systems supporting telecommunication networks and solutions as well as interoperability testing procedures to implement

specialized customizations to our proprietary BSS and OSS products and technologies to improve database efficiency without compromising network security.

- Use knowledge of and experience with our established system, regression, non-functional and production validation testing standards as well as our proprietary test management tools and methodologies to conduct root cause analysis aimed at improving individual effectiveness and at increasing the performance efficiency of the telecommunications network systems and solutions as well as to ensure compliance with our CMMI Level V and BS7799 standards.
- Assess off-shoreability of software applications using our proprietary ShoreCan tool.
- Customize our proprietary COBOL Maintenance Workbench in accordance with the project requirements as well as AT&T frameworks to analyze, understand and evaluate existing architectures of the telecommunications network systems and solutions to ascertain the nature and type of enhancements.
- Conduct user acceptance as well as framework validation testing and transition phases wherein he will field any and all technical questions pertaining to the system architecture and coding attributes of the enhancements designed and developed by our India-based software development teams, including attending to, addressing and explaining any technical and/or functional glitches that may arise during the testing and acceptance phases.

The petitioner indicated that the beneficiary is qualified to perform these duties based upon his bachelor of engineering degree and his more than one year of "specialized professional level employment" with its parent company. The petitioner stated that the beneficiary joined the parent company in October 2005 and currently holds the position of "Telecom Testing Team Lead." The petitioner further described the beneficiary's qualifications as follows:

As a part of our employee orientation, [the beneficiary] completed an intensive training program conducted by our parent company wherein he gained in-depth knowledge and understanding of the highly specialized and unique coding attributes of our telecommunications and database management products, our project feasibility guidelines and, most importantly, our proprietary customizations to the BSS and OSS architecture that applies to the telecommunications line of business as well as our proprietary products and technologies designed and developed by the Centers of Excellence operated and maintained by our parent company. In addition, [the beneficiary] gained further experience with AT&T frameworks and various functional and non-functional testing technologies, including manual and automated testing, regression testing, black box and white box testing, smoke testing and system testing technologies. [The beneficiary] also evaluated and assessed the interaction of these latest cutting-edge functional and non-functional testing technologies . . . with our proprietary customizations to the BSS and OSS architecture as well as our proprietary development tools such as the COBOL Maintenance Workbench and the ShoreCan tool.

Ever since he joined [the foreign entity], [the beneficiary] has worked as a part of our off-shore team working on our AT&T project (Light Speed Order Management Systems), the same project he will be working on while in the United States. A Telecom Testing Team Lead, [the beneficiary] has been responsible for leading our specialized telecom testing teams in conducting functional and non-functional testing . . . of the specialized customizations that we have made to our proprietary BSS and OSS products and technologies designed to address AT&T's current and anticipated needs in connection with its Light Speed Order Management System.

The petitioner indicated that the beneficiary's core duties with the foreign entity have been the same as his proposed duties in the United States. The petitioner emphasized that, in addition, the beneficiary's specialized knowledge also includes his knowledge of how the petitioner utilizes "off-the-shelf" switches and routers in its telecommunications solutions, as well as their interaction with its proprietary products, solutions and customizations. The petitioner also noted that the beneficiary, due to his experience with both on-site and off-shore teams, "knows what off-shore coding team performs what function, and thus he is uniquely qualified to determine what information gets transmitted to what off-shore coding team and the format in which this information is transmitted."

In an effort to further describe the nature of its products, the petitioner submitted an affidavit dated April 13, 2005 from a senior project manager, [REDACTED] and an affidavit dated April 14, 2005, from a customer delivery manager [REDACTED]. Mr. [REDACTED] stated that the petitioning organization is "uniquely qualified in the global telecommunications market." He explained that the petitioner's group has decades of experience in providing BSS and OSS services in the industry and has gained a "unique understanding of and experience with technological changes, market pressures, as well as telecom regulatory and billing environments." He also stated that the petitioner is distinguished from its competitors due to its experience in "various geographies," and its parent company's operation of Centers of Excellence dedicated to designing and developing customizations to new and advanced technologies and systems, and training the petitioner's personnel in the use of these technologies in multiple environments. [REDACTED] further emphasizes that the petitioner and its parent company operate a "unique mix of on-site/off-shore development model" for its projects. He also notes that the petitioner is a CMM Level V organization with very well-defined and specific processes and procedures to govern various aspects of its software development projects.

With respect to the need for specialized knowledge personnel, [REDACTED] states that it is "essential for [the petitioner] to station on-site its personnel who have worked with its off-shore development centers and are thus familiar with the aforementioned environments, technologies and processes." He concludes by stating that preventing [the petitioner's] specialized personnel from coming to the United States would impose significant costs and would adversely affect the petitioner's U.S. operations.

The petitioner's supporting documentation also included the following:

- An eight-page outline of the mASTER Service Delivery Methodology, apparently excerpted from the petitioner's "Program Management Handbook," which is described as the petitioner's methodology for service delivery of IT services, business process outsourcing and managed services to clients. The process includes Analysis, Solution, Transition, Execution and Relationship phases.
- A seven-page overview of OSS Methodologies and an eight-page overview of OSS/Network Management Capabilities. According to the latter document, the company's OSS solutions include implementation of commercial off-the-shelf products, integration of OSS systems, and developing solutions for ISV's, telecom equipment manufacturers and wireless and IP network domains.
- A nine-page overview of COBOL Maintenance Workbench, which is described as a tool developed in-house by the petitioner "to assist developers in analysis of application, components and other maintenance/enhancement activities carried out in maintenance / enhancement projects."
- An overview of education and training opportunities within the petitioner's organization. The outline describes a 12-14 week induction training program that includes technology courses, software engineering courses, domain and behavioral courses.
- A two-page overview of ██████████ Family, which is described as a suite of tools which are used as part of the overall methodology for assessment and design of off-shoring programs. The ShoreCan tool "enables details of single assignments to be captured and assessed for off-shoring potential."

In addition, the petitioner submitted various training certificates earned by the beneficiary, which included the following:

1. "SBC: Express One: Difference," a half-day course completed on December 26, 2006.
2. "QMS," a half-day course completed on February 17, 2006.
3. "BS7799," a one-day course completed on February 6, 2006.
4. "SBC: Role Based Training" a half day course completed on January 30, 2006.
5. "CMMI Level 5," a one-day course completed on January 27, 2006.
6. "SQA" a half-day course completed on January 18, 2006.
7. "mASTER," a half-day course completed on January 10, 2006.
8. "Prsnt on US Telecom Overview," a half-day course completed on December 21, 2005.
9. "SBC: Express An Intro Course," a half-day course completed on December 21, 2005.

Finally, the petitioner submitted copies of the beneficiary's pay slips from the foreign entity for the period July 2006 through June 2007. Although the petitioner indicated that the beneficiary has served as team leader on an AT&T project since joining the foreign entity, the pay slips show that he held the designation "technical associate" until May 2007.

The director found the initial evidence insufficient to establish that the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge. Accordingly, the director issued a request for additional evidence in which she instructed the petitioner to provide, *inter alia*, the following: (1) an explanation as to how the beneficiary's training is significantly distinctive in comparison to that of others employed by the petitioner or another similarly-employed person in his field; and (2) the total number of employees at the U.S. location where the beneficiary will be assigned.

The director also noted that the beneficiary would be located at the worksite of an unaffiliated employer while in the United States and requested evidence to establish that placement of the beneficiary would not merely constitute an arrangement to provide labor for hire. In this regard, the director requested: copies of contracts, statements of work, work orders, service agreements between the petitioner and the unaffiliated employer for the services or products to be provided; a brief description, in layman's terms, of the reason the beneficiary's specialized knowledge is required; a copy of the pertinent parts of the petitioner's milestone plan showing beginning and ending dates for the product or service to be provided; and copies of the petitioner's human resource records providing the beneficiary's job description and the worksite location.

In a response dated November 7, 2007, counsel for the petitioner cited the regulatory definition of specialized knowledge, and referred to a 1994 legacy Immigration and Naturalization Services (INS) memorandum.¹ Counsel emphasized that, according to the 1994 memorandum, "the knowledge which the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm." Counsel further asserted that "[t]he mere fact that the sponsoring employer will be subjected to significant economic burden if required to impart that knowledge to U.S. workers is in itself a confirmation that both the knowledge as well as the beneficiary are specialized."

Counsel further asserted that the evidence submitted with the initial petition "overwhelmingly" detailed the specialized knowledge possessed by the beneficiary, how he acquired such knowledge and why such specialized knowledge is critical to the petitioner's business operations. Counsel quoted extensively from previously submitted letters and affidavits, and provided a list of exhibits that were attached to the original petition package. Counsel concluded by stating that "the Beneficiary possesses, and in performing the job duties will rely exclusively upon, the specialized knowledge that is critical to the success of Petitioner's project engagements and its competitiveness in the North American market place and this knowledge cannot be transmitted to other individuals without imposing onerous economic loss on the Petitioner and without jeopardizing Petitioner's success."

The director denied the petition on November 29, 2007, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in a position requiring specialized knowledge. In denying the petition, the director noted that, although the petitioner referred to "an intensive training program" completed by the beneficiary, it had documented his completion of only nine training courses

¹ See Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1994) (hereinafter "Puleo memorandum")

requiring a total of less than six days of instruction. The director noted that the training courses included introductory courses and training in industry-wide standards and technologies. The director further found that the duties the beneficiary's performed for the foreign entity appear to have been essentially those of a skilled worker, and that the beneficiary's experience demonstrates knowledge that is common among telecommunications consultants employed by the foreign entity and by other companies in the information technology field.

The director further noted that merely asserting that the beneficiary is familiar with the petitioner's tools, procedures, methodologies or programs, proprietary or otherwise, does not necessarily establish that he has obtained specialized knowledge. The director noted that "[o]perating knowledge of a tool, procedure, methodology and/or program is, actually, the lowest level of knowledge rather than the high level claimed." The director concluded that the petitioner did not furnish sufficient evidence to demonstrate that the beneficiary's duties involve specialized knowledge of the petitioner's product, tools, processes or procedures, as opposed to the skills required merely to use such products.

On appeal, counsel for the petitioner disagrees with the director's legal analysis and conclusions, and asserts that the petitioner submitted sufficient evidence to establish that the beneficiary possesses specialized knowledge, and that he will be employed in a capacity requiring specialized knowledge. Counsel contends that the director's decision is inconsistent with the evidence on record, and is based on an incorrect legal analysis. Specifically, counsel asserts that "[t]he regulatory framework surrounding the L-1B visa classification does not create any sub classes ('high level' versus 'low level') of 'specialized knowledge.'" Counsel asserts that the applicable regulations and agency memoranda "clearly establish that the knowledge of processes and/or products etc. qualifies as 'specialized knowledge' if it would be difficult to impart it to another individual without causing an economic inconvenience to the US firm."

Counsel further asserts that while the director acknowledged that the foreign entity's engineers attend a "12-14 month training program," the director overlooked the fact that this training program provides the parent company's engineers with proprietary knowledge of the petitioner's products and procedures "that distinguish [the petitioner] and its subsidiaries and affiliates from their competition and gives them their competitive advantage." Counsel contends that "[t]o require the Petitioner to conduct a 12-14 week training program for US workers would impose a significant economic hardship on the Petitioner because in such a scenario, the Petitioner would not be able to discharge, in a timely manner, its contractual obligations towards its clients in the United States."

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

A. Standard for Specialized Knowledge

As enacted by the Immigration Act of 1990, 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.

Looking to the plain 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 as to what constitutes specialized knowledge to the nature of the term itself:

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).²

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

² 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 former INS definition is equally illuminating when applied to the definition created by Congress.

be within an elevated class of workers within a company and not 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.* This legislative history has been widely viewed as supporting 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).

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(I)(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 legacy 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)).

In effect, Congress has charged the agency with making a comparison based on a relative idea that has no plain meaning. 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). 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.

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

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary 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. 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 industry.

B. Analysis

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.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. While the petitioner has provided a detailed description of the beneficiary's duties, such duties appear to be typical of a telecommunications specialist working in the petitioner's industry. The beneficiary, like any telecommunications testing consultant is required to be proficient in the use of "various functional and non-functional testing technologies." The petitioner asserts, however, that the position requires knowledge of proprietary customizations to BSS and OSS architecture, knowledge of the company's mASTER project methodology, experience using tools such as COBOL Maintenance Workbench and Shore-Can, and client-specific project experience. The implication of such claims, therefore, is that the duties could not be performed by the typical skilled worker, even one with a similar educational and professional background compared to the beneficiary.

Therefore, the first question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies alone constitutes specialized knowledge. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification.

Reviewing the precedent decisions that preceded the Immigration Act of 1990, there are a number of conclusions that were not based on the superseded regulatory definition, and therefore continue to apply to the adjudication of L-1B specialized knowledge petitions. In 1981, the INS recognized that "[t]he modern workplace requires a high proportion of technicians and specialists." The agency concluded that:

Most employees today are specialists and have been trained and given specialized knowledge. However, in view of the [legislative history], it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees. The House Report indicates the employee must be a "key" person and associates this employee with "managerial personnel."

Matter of Colley, 18 I&N Dec. at 119-20.

In a subsequent decision, the INS looked to the legislative history of the 1970 Act and concluded that a "broad definition which would include skilled workers and technicians was not discussed, thus the limited legislative history available therefore indicates that an expansive reading of the 'specialized knowledge' provision is not warranted." *Matter of Penner*, 18 I&N Dec. at 51. The decision continued:

[I]n view of the House Report, it cannot be concluded that all employees with any level of specialized knowledge or performing highly technical duties are eligible for classification as intra-company transferees. Such a conclusion would permit extremely large numbers of persons to qualify for the "L-1" visa. The House Report indicates that the employee must be a "key" person and "the numbers will not be large."

Id. at 53.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself, will not equal "special knowledge." USCIS must interpret specialized knowledge to require more than fundamental job skills or a short period of experience. An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in the L-1B classification.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and systems development projects,

as well as "proprietary customizations to the BSS and OSS architecture that applies to the telecom line of business." The record shows that the petitioner's COBOL Maintenance Workbench is a tool developed internally "to assist developers in analysis of application, components and other maintenance/enhancement activities carried out in maintenance / enhancement projects." The "Shore-Can" tool is described as "part of the overall methodology for assessment and design of off-shoring programs." Finally, mASTER Service Delivery Methodology, is described as the petitioner's methodology for service delivery of IT services, business process outsourcing and managed services to clients. However, all IT consulting firms develop internal tools, methodologies, procedures and best practices for documenting client project management, technical life cycle and software quality assurance activities.

Furthermore, while the petitioner refers to its "proprietary customizations to the BSS and OSS architecture," the record contains no explanation as to how the petitioner's Business Support Systems (BSS) and Operations Support Systems (OSS) are "customized" or how implementation of BSS and OSS solutions requires specialized knowledge. The only documentation submitted in this regard, titled "OSS/Network Management Capabilities," states that the petitioner provides "focused OSS and Network Management solutions." The document indicates that "[w]hile providing system integration and Design solution in this space, [the petitioner] has been practicing various standards from Telemanagement Forum (TMF), ITU-T, 3GPP, etc." The same document indicates that the company has "rich and varied experience working on networking protocols such as SNMP, CMIP, TL1, RADIUS, CLI, COPS," and "experience with standards and protocols such as CORBA, RPC, UNIX, J2EE, .net, SOAP, XML, etc." The overview indicates that the company implements commercial off the shelf (COTS) products towards solution realization. While it appears that the petitioning company has the capability to customize network and OSS architectures to meet specific clients' needs, it is also evident that the petitioner builds its solutions on industry standards and protocols using technologies that are widely available. The AAO cannot conclude based on the evidence submitted that the beneficiary, as a result of his employment or training with the foreign entity, has knowledge or experience in the BSS/OSS field that is significantly different from that possessed by similarly employed workers employed by other telecommunications industry consulting companies.

The petitioner has not specified the amount or type of training its technical staff members receive in the company's technologies, tools and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the petitioner indicates that its employees complete a 12 to 14 week "induction training program," it provided no detailed information or documentation regarding the content and depth of such training, which is stated to involve "technology courses, software engineering courses, domain and behavioral courses." Furthermore, there is no evidence that the beneficiary himself completed any training in company-specific or proprietary technology, tools or methodologies beyond a half-day course in the mASTER service delivery methodology.

To the contrary, the evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's processes and methodologies. The claim that the beneficiary "completed an intensive training program" with the foreign entity is not supported by the evidence of record, which documents his completion of a total of six days of training, only half a day of which focused on a proprietary tool developed by the petitioner. The petitioner has not documented the beneficiary's completion of the 12 to 14 week training program. Rather, it appears that he was hired by the foreign entity immediately assigned to work on the offshore component of the unaffiliated employer's Light Speed Order Management project in a role similar to the one he has been offered in the United States. Regardless, a three-month long induction program required of all technical employees could not be considered to impart advanced knowledge of the petitioner's processes and procedures.

Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are simply customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in telecommunications industry software and systems development. The petitioner has not articulated or documented how specialized knowledge is typically gained within the organization, or explained exactly how and when the beneficiary gained such knowledge. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

The petitioner argues that the second component of the beneficiary's purported specialized knowledge is his knowledge with the unaffiliated employer's Light Speed Order Management System project and familiarity with the client's frameworks. The beneficiary's familiarity with the unaffiliated employer's systems, frameworks 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 consultants within the petitioning organization would reasonably be familiar with its proprietary internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients, which the petitioner would equate to knowledge of the application of the petitioner's methodologies and processes in "international markets." However, the fact that the beneficiary possesses very specific experience with a particular international client project does not establish that the beneficiary's knowledge is indeed special or advanced.

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

It is appropriate for USCIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of*

LeBlanc, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

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

The specialized knowledge classification requires USCIS to distinguish between those employees that possess specialized knowledge from those that do not possess such knowledge. On one end of the spectrum, one may find an employee with the minimal one year of experience and the basic job-related skill or knowledge that was acquired through that employment. Such a person would not be deemed to possess specialized knowledge under section 101(a)(15)(L) of the Act. On the other end of the spectrum, one may find an employee with many years of experience and advanced training who developed a proprietary process that is limited to a few people within the company. That individual would clearly meet the statutory standard for specialized knowledge. In between these two extremes would fall, however, the whole range of professional experience and knowledge.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during his 22 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 proprietary tools and processes for implementing projects. By this 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."³ An expansive interpretation of specialized knowledge in

³ 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

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

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

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, it 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.⁴

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).

⁴ 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

Counsel asserts that, according to the memorandum, "the knowledge which the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm." Counsel states that "[t]he mere fact that the sponsoring employer will be subjected to significant economic burden if required to impart that knowledge to U.S. workers is in itself a confirmation that both the knowledge as well as the beneficiary are specialized." Finally, counsel claims that the economic hardship would occur if the petitioner had to provide 12 to 14 weeks of training to U.S. workers. As discussed above, the petitioner has not described its 12 to 14 week training program in any detail, nor provided evidence that the beneficiary himself actually completed such a program. Contrary to counsel's assertions, the knowledge imparted during the training program cannot be deemed to involve specialized knowledge merely because the petitioner states that it would be cost prohibitive to provide the training to a U.S. worker. Given the petitioner's claims that all employees within the foreign entity complete the same three-month training program, the petitioner cannot maintain an argument that completion of this program alone constitutes specialized knowledge within the organization. As noted above, although it is accurate to say that "the statute does not require that the advanced knowledge be narrowly held throughout the company," 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

The Puleo memorandum does describe possible attributes that would support a claim of specialized knowledge. However, the petitioner is unwise to simply parrot the memorandum, without submitting sufficient 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

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

the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Based on the evidence presented and applying the statute, regulations, and binding precedents, the petitioner has not established that the beneficiary has specialized knowledge or that he has been or would be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that the conditions of the beneficiary's proposed L-1B employment at the worksite of the unaffiliated employer, AT&T (the "unaffiliated employer"), are in compliance with the terms of the L-1 Visa Reform Act of 2004. Assuming *arguendo* that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is also applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004).⁵

⁵ The term "job shop" is commonly used to describe a firm that petitions for aliens in L-1B status to contract their services to other companies, often at wages that undercut the salaries paid to United States workers. Upon introducing the L-1 Visa Reform Act of 2004, Senator Saxby Chambliss described the abuse as follows:

The situation in question arises when a company with both foreign and U.S.-based operations obtains an L-1 visa to transfer a foreign employee who has "specialized knowledge" of the company's product or processes. The problem occurs only when an employee with specialized knowledge is placed offsite at the business location of a third party company. In this context, if the L-1 employee does not bring anything more than generic knowledge of the

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988).

If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner bears the burden of proving eligibility. Section 291 of the Act; *see also* 8 C.F.R. § 103.2(b)(1).

As a threshold question in the analysis, USCIS must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. Section 214(c)(2)(F) of the Act.

The petitioner indicated on the Form I-129 petition that the beneficiary will be employed in San Ramon, California, and confirmed in accompanying statements that the beneficiary will be located primarily at the offices of the unaffiliated employer. In response to Question 13 on the Form I-129 Supplement L, the petitioner answered "Yes" when asked: "Will the beneficiary be stationed primarily offsite (at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent)?" The AAO concludes that the beneficiary will be primarily employed as a telecommunications testing consultant at the worksite of an unaffiliated employer, thereby triggering the provisions of the L-1 Visa Reform Act.

The petitioner therefore must establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

The first issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. Section 214(c)(2)(F)(i) of the Act. If the petitioner does not establish that the beneficiary will be controlled and supervised principally by the petitioner, the petition cannot be approved.

The petitioner stated on Form I-129 that the "beneficiary's work will be closely controlled and supervised by Petitioner's full-time Project Managers who are stationed at client's worksite." The petitioner further stated that the petitioner has a "dedicated office facility that is located within client's worksite."

third party company's operations, the foreign worker is acting more like an H-1B professional than a true intracompany transferee. Outsourcing an L-1 worker in this way has resulted in American workers being displaced at the third party company.

149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003). In general, the L-1B visa classification does not include the same U.S. worker protection provisions as the H-1B visa classification. *See generally*, 8 C.F.R. §§ 214.2(h) and (l).

In the RFE issued on September 7, 2007, the director requested evidence to establish the location where the beneficiary will work and evidence that the beneficiary will be controlled and supervised principally by the petitioner. The director specifically requested, *inter alia*, copies of contracts, statements of work, work orders, and service agreements between the petitioner and the unaffiliated employer or client for the services or products to be provided.

In response, counsel for the petitioner stated that "even though the Beneficiary will engage in hands-on productive work at facilities owned and controlled by the Petitioner's clients, the Petitioner will NOT second the Beneficiary to its client. Rather, the beneficiary's day-to-day activities will be controlled and supervised by the Petitioner's project managers." The petitioner submitted an affidavit from [REDACTED] Head of Human Resources for the U.S. company, who confirmed that the company's specialized knowledge personnel report to the petitioner's project managers even while working at client sites. [REDACTED] stated that the petitioning company "controls the day-to-day activities of its specialized knowledge personnel." He acknowledged that specialized knowledge personnel working at client sites "may submit details of the hours worked to [the petitioner's] client, but stated that "submission of this information to [the petitioner's] clients is not for supervision purposes." [REDACTED] referred to an organizational chart accompanying his affidavit, which is purported to depict the reporting structure for the beneficiary's proposed position. However, the AAO cannot locate such a chart in the record of proceeding.

Upon review, the petitioner has not submitted sufficient evidence to establish that the beneficiary will be primarily controlled by the petitioner during his assignment to the unaffiliated employer's worksite.

The director clearly requested material evidence when she asked for copies of contracts, statements of work, work orders, and service agreements between the petitioner and the client, AT&T. Other than unsupported statements of the petitioner and counsel, there is no documentary evidence that would substantiate the claim that the beneficiary will be supervised primarily by the petitioner's unnamed "project managers." The petitioner also failed to identify the number of employees it has stationed at the San Ramon, California site, has not provided evidence to corroborate its claim that it has an office within the client's facility, and has not provided the exact address of the worksite or the identity of the beneficiary's intended supervisor. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition must be denied.

The AAO maintains plenary power to review each appeal and certification on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative

grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.