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



U.S. Citizenship
and Immigration
Services

D7

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 23 2010**

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:

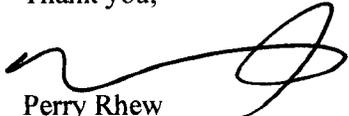
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the petition for a nonimmigrant visa. After a U.S. Department of State consular officer interviewed the beneficiary in Sao Paulo, Brazil, the officer refused visa issuance, returned the petition to the director, and recommended that the director commence revocation proceedings. Upon further review, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of his intent to revoke the approval and subsequently, after reviewing the petitioner's rebuttal evidence, ordered that the approval be revoked. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to extend the beneficiary's employment as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the development and operation of Brazilian *churrasco*-style restaurants. It states that it is the parent company of the beneficiary's foreign employer Fogo's Churrascaria Ltda, located in Brazil. The petitioner seeks to employ the beneficiary in the position of *churrasqueiro*, or *gaucho chef*, for a period of three years.

The director approved the nonimmigrant petition on October 30, 2006. The U.S. Department of State refused to issue the visa to the beneficiary on or about March 30, 2007 and returned the petition to the director for review. After properly issuing a notice of intent to revoke, and after reviewing the petitioner's rebuttal to that notice, the director revoked the approval on March 13, 2008, finding that the approval of the original petition involved gross error in that the evidence of record did not establish that the beneficiary possesses specialized knowledge or that he would be employed in a position requiring specialized knowledge. Among other conclusions, the director found that, despite the petitioner's claim that it requires its chefs to complete two years of training, the beneficiary's resume shows that he began working as a *churrasqueiro* immediately upon commencing employment with the foreign entity, thus suggesting that the duties and skills required are actually typical in the petitioner's industry.

On appeal, counsel submits a brief and asserts that the director's decision was arbitrary, capricious, and not in accordance with the law, the regulations, and U.S. Citizenship and Immigration Services (USCIS) policy. Counsel further asserts that the director applied an improper standard with regard to revoking the petition based on a finding of gross error.

I. The Law

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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.

As previously stated, the petitioner seeks to classify the beneficiary as a nonimmigrant transferee with specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

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 Fifth Circuit Court of Appeals has previously affirmed the USCIS decision to deny L-1B petitions filed on behalf of churrasqueiros based on the petitioner's failure to submit evidence regarding individual beneficiaries' skills and abilities, and inability to establish that Brazilian cooking is sufficiently specialized to merit L-1B status. *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006).

Similar to the facts of this case, the *Boi Na Braza* petitioner had claimed that its churrasqueiros possessed skills and abilities unavailable elsewhere, and contended that its churrasqueiros specialize in an exclusive,

flamboyant method of preparing and serving meat. In denying the petition, USCIS had found that the petitioner failed to distinguish its cooking and serving techniques from those used by other similar Brazilian restaurants, and failed to adequately describe and document the beneficiaries' skills, abilities and company-specific training such that it could be determined that any of the beneficiaries has knowledge of any aspect of Brazilian cooking that is sufficiently unusual in the Brazilian culinary industry. The court rejected the plaintiff's argument that the decisions to deny the 20 petitions were improper simply because the same USCIS service center had previously and recently granted extensions to certain other beneficiaries performing in the same employment capacity. 2005 [REDACTED] at *9.

II. Procedural History

The primary issues raised on appeal are first, whether the petitioner has established that the beneficiary will be employed in a specialized knowledge capacity; and second, the related issue of whether the director properly revoked the approval after approving the petition in gross error. However, before the AAO may examine these issues, it is necessary to review the complex history of this petition and the circumstances that led to the petition's revocation.

A. The Initial Petition

The petitioner filed the nonimmigrant petition on October 19, 2006. In an affidavit dated October 10, 2006, the petitioner explained that it seeks to employ the beneficiary temporarily in the United States as a *churrasqueiro*, which is generally translated into English as a barbeque chef. Simultaneously, the beneficiary's proposed position requires him to act in a theatrical manner as a "gaucho," or cowboy, which also, according to evidence submitted, refers to "a simple and hospitable man." The petitioner's restaurant endeavors to provide its customers with an authentic taste of Southern Brazil and its culture, requiring its gaucho chefs to not only cook meats to order but also be well-versed in cultural facts and storytelling.

The petitioner described the *churrasqueiro* position as one involving "specialized knowledge, in that "it is the key position in our organization; it requires an advanced knowledge of the [the petitioner's] processes and procedures that underlie its business model; and it would be difficult to impart this knowledge without significant economic inconvenience or disruption to the U.S. company."

The petitioner's affidavit included a list of twenty processes and procedures implemented by its international organization to ensure "consistent execution of its business model." These procedures include forecasting business flow within the restaurant; identifying top quality meat; implementing cold storage and sanitary handling procedures; assessing meat quality for use in preparing *churrasco*; estimating quantities of each type of meat needed at the start of the shift; pre-cutting and skewering meats using the petitioner's standards; preparing marinades and seasoning for meats; safely operating an open flame grill; controlling grill temperature; ensuring the safety of guests; keeping pace with customer's needs and requests; communicating with co-workers to ensure optimal customer service; and "reading" the dining room and adding meats and adjusting the grill temperature accordingly.

The list of "processes and procedures" also included several that are ancillary to preparing, cooking and serving meats, which included the following:

- Balance and integrate culinary and performance aspects with tableside carving service to each of 300+ customers daily;
- Act the role of Brazilian gaucho of the 19th century;
- Interact with Brazilian gaucho persona;
- Communicate to customers the history, hospitality, traditions, values, cultural attributes and the lifestyle of gauchos in southern Brazil.

The petitioner noted that it has been transferring *churrasqueiros* from Brazil in the course of developing six restaurants in the United States since 1997, and emphasized that its claim that these employees qualify as possessing specialized knowledge has never been "solely because of their culinary skills and knowledge." The petitioner stated that the *churrasqueiros*, in addition to having "high level cooking skills," must perform both guest service and entertainment duties, and that the combination of all three aspects of the position is what constitutes the claimed specialized knowledge.

The petitioner also briefly addressed the beneficiary's prior employment abroad stating that he "has acquired an advanced knowledge of the processes, procedures and techniques . . . for consistently executing [the petitioner's] business model." The petitioner stated that the beneficiary has been continuously employed by the foreign entity since November 2003, and was selected for transfer to the United States because "he possessed advanced knowledge of the company's system for producing an authentic experience of the gaucho culture of southern Brazil." The petitioner stated that knowledge of its processes and procedures is unavailable in the United States, can only be gained with the foreign entity, and cannot easily be transferred to a U.S. worker.

The petitioner submitted a copy of the beneficiary's resume, which indicates that he has been employed by the foreign entity in the position of *churrasqueiro* since joining the company in November 2003. Immediately prior to joining the foreign entity, the beneficiary served as a *churrasqueiro* for an unrelated Brazilian restaurant from August 2001 until January 2003. The beneficiary also lists two additional years of experience as a *passador* (gaucho assistant) and waiter in Brazilian *churrasco*-style restaurants between 1998 and 2001.

In support of its contention that the proposed position in the United States involves specialized knowledge, counsel submitted three opinion letters. The first opinion was prepared by [REDACTED] President of Concept Management, Inc. In a letter dated March 4, 2004, Mr. [REDACTED] states that he is qualified to assess the nature of the proposed position based on his experience managing and consulting in the restaurant industry for over thirty years. He indicates that he was engaged to "provide a third party review and analysis of [the petitioner's] Business/Concept Model and employment as they pertain to the company's competitive advantage/differential in the marketplace."

With regard to the petitioner's business model, Mr. [REDACTED] states:

The business model is dependent on achieving a unique, high quality, top of market Southern Brazilian style Churrascaria (Steak House) experience for each guest. To achieve this, [the

petitioner] must maintain strict adherence to the Southern Brazilian Churrascaria traditions and culture or its business model differentiation will be lost.

* * *

Simply put, [the petitioner's restaurant] must be in all ways authentic; not an imitation or Americanized version of the original/real thing. There is a theater-like, entertainment component of the concept that [the petitioner's] guests have come to expect as a part of their dining experience. At the \$70.00 per person check average . . . [the petitioner's] guests *expect to be engaged by authentic "gauchos."* This Portuguese term, sometimes translated as "cowboy," stands for the true Southern Brazilian culture, traditions and values that [the petitioner] incorporates into its business concept/model. As discussed in [the petitioner's] training materials, the gaucho ethic is summarized by the phrase, "a simple and hospitable man."

With regard to the proposed position of *churrasqueiro*, Mr. [REDACTED] states:

"Churrasqueiros" are the primary driver of [the petitioner's] Business/Concept Model. The entire business – from the customer's standpoint as well as from the managers' and the owners' – is organized around these key personnel. They are unique in the industry in that they perform a combination of professionally trained skill level roles each day, both "back of the house/kitchen" and "front of house/customer service." [The petitioner's] "churrasqueiros" possess uncommon knowledge and skills that clearly distinguish them from others in the industry.

Mr. [REDACTED] emphasized that the selection process for *churrasqueiros* and future management "begins in Southern Brazil," and stated that selection criteria favors candidates who possess related spit fire roasting experience." Mr. [REDACTED] noted that many candidates acquire such knowledge during boyhood as part of their "Southern Brazil heritage," as well as "personal cultural/behavior characteristics that symbolize and convey the authentic lifestyle." He stated that the initial period of the foreign entity's training process is "at least two years to be certified or promoted to the position," and that the foreign entity invests between \$40,000 and \$45,000 in the training and development of *churrasqueiros* who are certified and eligible for a position in the United States.

In addition, Mr. [REDACTED] stated:

There is an observable difference between the performance of [the petitioner's] "churrasqueiros" and those of its competitors. [The petitioner's] competitors do not re-create the same traditional, authentic experience of Southern Brazil, but instead offer an Americanized version of the real thing. By not investing in specialized training and

retraining of churrasqueiros to the same extent, competitors do not deliver the true authentic experience.¹

The second opinion was a declaration prepared by [REDACTED] founder of the First Center for Traditions of Rio Grande do Sul. In a statement dated August 26, 2004, he comments on the proposed position and its cultural relevance, as set forth in the excerpts below.

[The petitioner] is structured to present the traditional barbeque of Rio Grande do Sul (grill of meats over fire of live coal) in authentic environment and forms, using the method of *Grill over fire of live coal* used by the people of Rio Grande do Sul since the 19th Century in pastoral activities.

* * *

I am amazed to observe that the structure and the very success of [the petitioner] is directed to the barbeque chefs that are instructed to serve meats to the guests in the best traditional way of Rio Grande do Sul. They are trained to wear the traditional clothing of the State; talk to the guests about songs and poetry; talk to them, answering the most varied questions. In general, the barbeque chefs explain questions not only regarding to [sic] the meats served; the method for cutting, seasoning and grilling, further providing an historical overview of their clothing, boots, and equipment, of our customs and of the location from where they came and now represent.

Finally, Mr. [REDACTED] states:

It is pleasant to see that [the petitioner] has expanded the culture of Rio Grande do Sul throughout the globe, and its employees will certainly show the North American people the traditions, customs, gastronomy, and values of Rio Grande do Sul.

Finally, the petitioner submitted a letter dated January 10, 2004 from [REDACTED] Associate Professor of Hospitality Management at the University of North Texas. Dr. [REDACTED] states that the petitioner's current organizational structure allows for the "consistent and uniform creation of the complete churrasceria experience at each one of their units every time, all the time."²

¹ Mr. [REDACTED] stated that his review and analysis of the petitioner's operations was based, in part, on unannounced observation and assessment of four competitor *churrascaria* restaurants in the United States. He also indicated that he met with and interviewed the petitioner's executive officer, restaurant level management, *churrasqueiros* and other restaurant employees; analyzed the petitioner's employee selection, training and development documents; observed operations at two of the petitioner's restaurants, and relied on his "historical experience and observations as a restaurant industry expert and consultant."

² Dr. [REDACTED] stated that, as part of his evaluation, he dined at the petitioner's Dallas, Texas restaurant, dined at a competing restaurant in the area, reviewed the petitioner's training materials and videos, read newspaper and magazine reviews of the petitioner's U.S. and Brazilian restaurants, researched the culture, cuisine and lifestyle of the Pampas Region of Brazil, and conducted interviews with the petitioner's managers, wait staff, and gauchos.

Additionally, Dr. [REDACTED] states:

[The petitioner] is successful in the highly competitive upscale-restaurant marketplace because it has an identifiable system that enables it to consistently to deliver an *authentic, genuine, experience* of the lifestyle and cuisine of the cowboys of the Brazilian Pampas to an extremely sophisticated and knowledgeable clientele. The *Gaucha* is at the core of this concept. [The petitioner] is able to consistently deliver this experience because it utilizes carefully selected Brazilian Gauchos, who are then painstakingly trained to combine culinary and service and dramaturgy skills carefully aligned with [the petitioner's] corporate philosophy. *Such unusual expertise is NOT imparted by any college, university or culinary academy in the USA, nor is it generally known in the industry.* It clearly distinguishes [the petitioner].

(Emphasis in original.) Dr. [REDACTED] concludes by stating that "it is clear that the *Gauchos* of [the petitioner] possess distinctive knowledge of the company's system and methods for consistently creating an authentic experience of Brazilian culture and cuisine."

Additionally, counsel submitted a letter dated October 18, 2006 in support of the petition. In addition to restating much of the information outlined in the opinions quoted above, counsel referred to three internal agency memoranda which discuss the term "specialized knowledge." See Memorandum of [REDACTED] Executive Assoc. Comm., INS, *Interpretation of Special Knowledge*, (March 9, 1993) ([REDACTED] Memorandum); Memorandum of [REDACTED] Assoc. Comm., INS, *Interpretation of Specialized Knowledge* (Dec. 20, 2002) ("2002 [REDACTED] Memorandum"); Memorandum of [REDACTED] Director, Service Center Operations, USCIS, *Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status*, (September 9, 2004) ("2004 [REDACTED] Memorandum").

Counsel asserted that according to these memoranda, "the foreign employee must have advanced knowledge of the process or product of the petitioning company that 'would be difficult to impart to another (U.S.) individual without significant economic inconvenience to the U.S. or foreign firm.'" Counsel stated that the petitioner was submitting "significant evidence to satisfy this standard." Counsel emphasized that the *churrasqueiros* are the "main attraction" of the petitioner's restaurants and provide the petitioner with the ability to differentiate itself in the marketplace by providing an "authentic gaucha experience." Counsel further stated that the petitioner met the requirements outlined in the 2004 [REDACTED] Memorandum in that the gaucha chef plays a "key role" in the uninterrupted operation of the petitioners business and its ability to "replicate is success in the United States."

In addition, counsel asserted that the petitioner established that the position involves specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Briefly, counsel asserted that the knowledge possessed by a *churrasqueiro* is specialized because the petitioner recruits individuals with knowledge of the gaucha lifestyle of southern Brazil, and completes this knowledge "by imparting to the individual the company's unique techniques, and their application in international markets . . . during its two-year training program." Counsel further stated that the position of *churrasqueiro* is one that involves "advanced knowledge of [the petitioner's] processes and procedures for consistently producing a genuine experience of southern Brazilian gaucha culture, cuisine and customs." Counsel stated that the claimed specialized knowledge "is uncommon,"

"exceedingly rare within the restaurant industry," and not generally known by specialty chefs in Brazil or in the United States.

Finally, counsel again referred to the 2004 [REDACTED] Memorandum as being particularly relevant to the petitioner's claims. Counsel acknowledged that the memorandum provides that a foreign specialty chef, in general, will not qualify for L-1B classification, but noted that the memorandum also provides that specialty chefs who perform duties "ancillary to cooking" such as singing or entertaining, may qualify. Counsel notes that the memorandum requires adjudicators to "assess the length and complexity of in-house training required to perform such duties." Counsel emphasized that the *churrasqueiro's* "ancillary" duties include serving guests continuously, on demand, from the "*espeto*," a sword-like skewer, playing the role of a 19th century gaucho, and entertaining guests with information and explanation regarding the gaucho culture. Counsel asserted that the petitioner's training program was developed by a degreed training specialist, requires two years to complete, and is, according to Mr. [REDACTED] "rigorous and intensive."

In addition to the letter of support from counsel, the petitioner submitted a copy of its "Training and Development Program for Churrasqueiro/Chef." The training program is divided into "general," "specialist," "cultural" and "language" modules. The two "specialist modules" provide training in: (1) operation of the *churrasqueira*, encompassing meat inspection, storage, hygiene and handling techniques, preparation, planning and organization; and (2) the petitioner's customer service standards, encompassing posture when carrying the roasting spit, verbal communication and body language in the dining room, knowledge about meat, appropriate techniques for serving meat, and "customer service rules." The "cultural" modules include "gaucho culture" and "general culture and current events."

The petitioner also submitted copies of its training materials regarding "Gaucho Culture." The document is comprised of information regarding the State of Rio Grande de Sol (including a brief history and demographic information), descriptions of typical garb of a gaucho, typical implements, "gaucho cuisine," and "typical dances." The training materials also contain a list of 18 questions and answers regarding gaucho culture "to enable each employee to answer questions from our clients in the best way possible." The information is presented in summary form.

Upon review of the initial evidence, the director approved the nonimmigrant petition on October 30, 2006, for a three-year period commencing on November 1, 2006.

B. Notice of Intent to Revoke

Subsequent to the approval of the petition, the beneficiary submitted an application for an L-1 visa to the U.S. Consulate in Sao Paulo, Brazil. After interviewing the beneficiary, a U.S. Department of State consular officer in Sao Paulo, Brazil returned the petition to the director, with a memorandum recommending that the director review the petition for possible revocation.

According to the consular officer's memorandum dated June 21, 2007, a copy of which was provided to the petitioner, the beneficiary indicated to the officer during his interview that his job was that his skills are knowing how to select and season meats and how to work with a lot of energy. He indicated that he learned the trade at home in the south of Brazil. Based on this information, the officer concluded that the beneficiary

did not appear to possess specialized knowledge, an essential element that must be established to warrant approval of the L-1B nonimmigrant petition. Accordingly, the consular officer refused visa issuance.

The director conducted a review of the file, and issued a notice of intent to revoke the approval of the petition on October 25, 2007. In the notice of intent to revoke, the director noted that the beneficiary's claimed specialized knowledge, obtained during his employment with the foreign entity, was more akin to the knowledge and training obtained by all chefs and wait staff in the restaurant industry. The director noted that the training program appears to rely heavily on the practical application of standard restaurant practices for safety, food management and preparation, customer service and presentation skills. Specifically, the director noted that although the petitioner and foreign entity offer culturally specific cuisine and service based on a theme, this factor alone did not constitute uncommon service and thus impart specialized knowledge to the beneficiary. The director found insufficient evidence to establish that the beneficiary's knowledge of the petitioner's products is "special" or that his knowledge is advanced compared to other *churrasqueiros* employed by the petitioner and foreign entity.

Consequently, the director requested additional evidence to show how the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some usual quality. The director instructed the petitioner to elaborate upon the training required to perform the duties of the position and provide documentation to corroborate that the training is above and beyond what a chef or waiter would receive at any restaurant. The director also requested: a complete course syllabus for the training program; information regarding the amount of time required to achieve master of each element; the specific teach materials, manuals, books, slide shows, files, equipment, etc., used during the program; and an explanation as to how long an employee is given to learn the information.

The director also instructed the petitioner to explain how the knowledge documented in the syllabus requires 24 months to complete, to identify which components are taught in a classroom, and what components are taught on-the-job, and to indicate at what point during the 24-month training period a worker begins to perform the duties associated with the position. The director requested documentary evidence to establish that the foreign entity's processes and methodologies are different from those used by other comparable restaurants, and to highlight specific processes that are not widely used by or available to workers outside the petitioner's international organization.

Finally, the director requested evidence that would assist in comparing the beneficiary's credentials with those of similarly employed workers within the petitioner's organization. In this regard, the director instructed the petitioner to describe a typical work week for the beneficiary, highlight specific job duties that require specialized knowledge, and explain how the beneficiary's duties are different from those performed by other gaucho chefs within the organization. The petitioner was also instructed to specify the number of workers similarly employed by the organization at the foreign entity and at the United States locations, and to indicate how many employees have received training comparable to the training provided to the beneficiary.

C. Petitioner's Response to Notice of Intent to Revoke

The petitioner, through counsel, submitted a rebuttal to the proposed grounds for revocation on November 16, 2007. In the response, counsel's primary contention was that the director's basis for issuing the notice of

intent to revoke, was legally insufficient and improper. Specifically, counsel argued that the U.S. Consular Officer had no proper basis to return the petition to USCIS, and that the director failed to show how the approval of the petition constituted "gross error" pursuant to 8 C.F.R. § 214.2(2)(1)(9)(iii). These arguments will be addressed further below.

Regarding the specific inquiries of the director regarding the beneficiary's specialized knowledge, counsel argued that USCIS cannot require the petitioner to comply with criteria that do not comprise the "current specialized knowledge standard." In this regard, counsel asserted that the director inappropriately looked beyond the regulatory definition of "specialized knowledge" to the dictionary definition of the word "special." Counsel stated that "the Service must instead focus on explanations of the definition of specialized knowledge in the 1994 [REDACTED] Memorandum and the September 2004 Ohata Memorandum that clarify the specialized knowledge definition." Counsel asserted that while the instant petition relied on the tests set forth in these memoranda, the director failed to mention the memoranda in the notice of intent to revoke.

Counsel further argued that the notice of intent to revoke contained a reference to specialized knowledge employees as "key personnel," thus suggesting that the director had framed his review of the instant petition according to Congress's original intent in creating the L-1 visa category. Counsel emphasized that such an analysis would have been appropriate prior to the Immigration Act of 1990, which "sought to broaden the usefulness of the L-1 classification for international companies, and defined specialized knowledge." Counsel noted that the statutory definition, regulations and interpretive memoranda released since 1990 contain no references to "key personnel" or any similar requirements based on such a standard. Counsel stated that *churrasqueiros* are in fact key personnel within the petitioner's business, but that USCIS cannot require the petitioner to submit evidence that the beneficiary "is among the few 'key personnel' within the company."

Counsel further objected to the director's request for evidence as to how the beneficiary's duties differ from those of other *churrasqueiros*, noting that there is no requirement that the beneficiary's specialized knowledge be narrowly held within the company. Citing to the [REDACTED] Memorandum, counsel stated that the petitioner only needs to establish that the beneficiary's knowledge is advanced.

In response to the director's request that the petitioner submit evidence to demonstrate that the beneficiary's knowledge is uncommon, noteworthy and not generally known by practitioners in his field, counsel stated that the director appeared to have "simply ignored the detailed probative evidence on these issues in the form of the extensive studies of [REDACTED] and Dr. [REDACTED]." Counsel resubmitted copies of Mr. [REDACTED] and Dr. [REDACTED]'s opinion letters and provided a summary of each. Counsel argued that the notice of intent to revoke failed to even acknowledge the opinion evidence submitted, much less consider the weight to be given to the evidence in terms of the writers' expertise, the industry's acceptance of their expertise, the strength of the law and facts that they advanced in reaching their conclusions, or the process of their reasoning by which they concluded that the petitioner's *churrasqueiros* possess specialized skills and knowledge that are not easily transferable. Counsel contended that the opinions "must be allowed to stand for the propositions they advance."

Counsel asserted that there are "thousands of chefs of Brazilian citizenship" who lack the knowledge to be a *churrasqueiro*, and noted that the foreign entity only selects approximately one out of every 100 applicants to

be hired and trained to be a *churrasqueiro*. Counsel stated that the petitioner's *churrasqueiro* "is not simply a barbeque chef dressed as a gaucho," and explained the following requirements:

To function as [the petitioner's] *churrasqueiro*, an individual must have advanced knowledge not only of how to select cuts of meat for churrasco based on the customer's specifications, and of how to prepare it over the open flame grill to the patron's order and present it, but also the special knowledge of how to perform those duties while portraying an authentic gaucho of Rio Grande de Sul. As a *churrasqueiro*, the beneficiary is required to perform a combination of duties involved advanced culinary skills, traditional, "espeto corridor" service skills, and acting or entertainment skills, as they play the role of 19th century gaucho. These skills, as possessed by [the beneficiary] are clearly not commonly held throughout the restaurant industry. . . .

The Petition and evidence supporting it establish that [the beneficiary] has a highly developed level of knowledge of the [petitioner's] business concept, and the company's methods and procedures (stated above) for consistently creating the experience that its brand represents in the marketplace. His knowledge of that concept and its underlying methods and procedures is clearly at a higher level than others in the restaurant industry or even in the churrascaria industry.

Counsel emphasized that it screens "large numbers of rural residents of southern Brazil who can realistically convey the gaucho experience to its customers in the United States, and selects those who could be successful in the company's training program." Counsel stated that the first screening phase identifies those individuals who already possess some of the "special knowledge of Southern Brazil, where the churrasco experience is an important part of that region's history and culture."

In addition, referring to the 2004 [REDACTED] Memorandum regarding foreign specialty chefs, counsel asserted that the beneficiary's job description "clearly distinguishes his duties from those required of ordinary foreign specialty cooks or chefs." Counsel stated that "churrasqueiros are not ordinary foreign specialty cooks or chefs, who generally work in the kitchen, unseen by the customer." Counsel noted that, according to the 2004 [REDACTED] Memorandum, the petitioner needs to establish that the beneficiary's skill set "is so complex that it contributed directly to the success of the foreign entity," or that all of the company's chefs "must undergo rigorous in-house training in order to satisfactorily perform their job duties." Counsel stated that the memorandum also requires the petitioner to submit evidence that the company now wishes to replicate its success in the United States by transferring such personnel to the United States in order to establish "substantially similar operations." Counsel asserted that the petitioner meets these requirements as the petitioner's *churrasqueiros* possess complex skills that contribute to the success of the company in Brazil and that they are key to the continued successful replication of the Brazilian business concept in the United States.

Counsel also contended that the director's notice of intent to revoke ignored evidence that the beneficiary's training and experience is uncommon and not generally known by specialty chefs in Brazil or in the United States. Counsel noted that the beneficiary was selected for transfer because he "possesses an advanced knowledge of [the petitioner's] system for producing an authentic experience of the gaucho culture of southern Brazil." With respect to the petitioner's two-year training program, counsel noted that the petitioner

"more thoroughly documented" its established program in 2007, and submitted the updated document. Counsel asserted that the new program documentation describes in detail the objectives, teaching methodologies, teaching resources and duration of the *churrasqueiro* training program.

Counsel emphasized that the petitioner now operates ten restaurants in the United States, each of which employs approximately ten *churrasqueiros*, all of whom have received at least two years of experience and training with the foreign entity prior to their transfer to the United States. According to counsel, the updated training program includes information regarding the amount of time required to achieve mastery of each training element, including mastery of all "meat service" which involves knowledge and skills relative to "mozzarella, pork sausage, chicken, port heart, ribs, loin, chops, top sirloin, filet mignon, beef tenderloin, bottom sirloin, ribs and choice top sirloin." Counsel noted that it requires approximately 15 months for a trainee to acquire competency in customer service relative to each meat product.

In response to the director's observation that much of the petitioner's training program is centered on the practical application of standard restaurant practices, counsel acknowledged that the petitioner must train its *churrasqueiros* on methods for proper food storage and handling and other restaurant practices. However, counsel asserted that the director failed to consider evidence already in the record, such as the petitioner's training materials regarding the gaucho culture, which, according to counsel, "is certainly not training that one would expect to find at 'any restaurant.'" Counsel claimed that the petitioner's training is "far more involved and demanding" than what chefs or wait staff would normally receive, necessary, required and "unique in the industry."

Finally, counsel asserted that the initial evidence sufficiently explained the economic disruption the petitioner would suffer without access to intracompany transferees, and "how such business injury satisfied the standard established in the applicable agency memo." Counsel stated that the evidence submitted proves that the knowledge at issue would be impossible to impart to individuals without significant business injury.

The only new documentary evidence submitted in response to the notice of intent to revoke was the above-referenced updated training and development program for the position of *churrasqueiro*/chef, dated May 2007. This is a 22-page document which outlines the objectives, methodologies, and teaching resources used in the program, and provides an overview of the program's four modules. The petitioner notes that the duration of the program is typically 24 months but may vary depending upon the prior knowledge and experience of the trainee and the trainee's capacity and pace of learning.

The timeline provided in the program indicates that a newly-hired trainee will devote one semester to "basic" skills, two semesters to "intermediate skills" and one semester to "advanced" skills, while an "advanced worker" might complete the training in 18 months. The training consists of seminars and courses in which the students learn theoretical components in the classroom, and on-the-job training in which the instructor demonstrates routines and techniques for trainees and then supervises practical work activities in the workplace. The program is divided into the following modules:

- General, which includes topics common to all of the foreign entity's workers.
- Specialist, which is comprised of specific training to improve skills and become an expert in the function of *churrasqueiro*/chef..

- Cultural, the training module covering cultural topics.
- Language, which is the English language skills training component.

The topics of the training and development program include:

1. Integration of New Workers
2. Operation of Churrasqueira (meat delivery, storage, hygiene and handling techniques, preparation, grilling, and planning and organization).
3. Product Knowledge (meats, seasoning, marinade, authentic gaúcho dishes, side dishes, salad bar and dressings, desserts, drinks, wine).
4. [The petitioner's] Customer Service standards (verbal communication and body language, appropriate meat serving techniques, customer service rules, greeting, personalized service, perception of guest needs, meat service, closure of interaction with guests, safety rules).
5. Churrasqueira Cleanliness and Food Safety (hygiene, microbiology and food contamination, methods of food conservation, food safety).
6. Personal Development (communication processes, team work, motivation, skill level).
7. Work safety (fire extinguisher training, fire prevention, basic emergency procedures related to churrasqueira, accident prevention, first aid).
8. Gaúcho Culture (History of Rio Grande do Sul, Culture, Culinary, Attire, Tools and utensils, dances and literature).
9. General Culture and Current Events (History of employment city, places of interest, general current events, novelties in gastronomy).
10. English Course

The training and development program outline goes on to describe the first five modules in more detail.

D. Revocation

After reviewing the petitioner's rebuttal evidence, the director revoked the approval of the petition on March 13, 2008. The director determined that the evidence of record did not establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position requiring specialized knowledge.

Specifically, the director examined the record and noted that the petitioner had failed to document what portion of the beneficiary's training was classroom training and what portion was on the job training, and further noted that the petitioner provided no evidence that the beneficiary had in fact completed this training program. In this regard, the director further observed that, despite the petitioner's claim that it requires its chefs to complete two years of training, the beneficiary's resume shows that he began working as a *churrasqueiro* immediately upon commencing employment with the foreign entity, thus suggesting that the duties and skills required are actually typical in the petitioner's industry. The director found that the record contained insufficient evidence to demonstrate that an informally trained, newly-hired employee could not learn the techniques required for performance of the beneficiary's position in a short period of time.

The director further noted that the petitioner had failed to address the queries regarding food handling and storage methods, as well as customer service procedures, and how those aspects of the petitioner's business are differentiated from other standards in the industry. In addition, the director observed that the petitioner had failed to respond to his request for information regarding the number of similarly employed workers, and the number of those workers who have received training comparable to that received by the beneficiary. The director therefore concluded that the petitioner had failed to document that the beneficiary possesses any advanced knowledge of the foreign operating procedures that would establish him as a "key employee."

Finally, the director determined that "a restaurant offering culturally specific cuisine and service based on a theme does not in and of itself constitute uncommon service." The director noted that all properly trained chefs and servers must be capable of following an employer's methods and procedures for preparation and presentation.

E. Appeal

On appeal, counsel for the petitioner restates the points raised in the response to the notice of intent to revoke, and continues to assert that the beneficiary possesses specialized knowledge and thus qualifies for the visa classification prescribed under section 101(a)(15)(L) of the Act.

Counsel emphasizes that the petitioner will face "severe economic loss and disruption" if it is unable to transfer its trained churrasqueiros to the United States in L-1B classification. Counsel asserts that the petitioner has used the L-1B classification since 1997, employs eight to ten churrasqueiros in each of its ten U.S. restaurants, and will continue to have a critical need for "qualified and trained Brazilian churrasqueiros," as it grows and adds new restaurants. Counsel notes specifically that 213 L-1B petitions for churrasqueiros have been approved in the past, and contends that the revocation of the approval of the instant petition is arbitrary and capricious. Counsel states that the beneficiary is no less qualified than other churrasqueiros who have been granted L-1B status to work for the petitioner. Counsel further argues that the director's decision failed to address the other 213 petitions that have been approved.

This appeal raises three different issues for consideration: (1) what is the appropriate standard that should be applied to determine "specialized knowledge," (2) whether the beneficiary in this matter possesses specialized knowledge, and has been and will be employed in a specialized knowledge capacity; and (3) whether the director proper revoked the approval of the petition.

III. Determining the Appropriate Standard for Interpretation of Specialized Knowledge

The appropriate standard for determining specialized knowledge is the statutory definition of the term at section 214(c)(2)(B) of the Act, along with USCIS regulations and applicable precedent decisions. When a statute is ambiguous, Congress has left a gap for the agency to fill. *See Chevron USA Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 843-44 (1984). In interpreting section 214(c)(2)(B), the AAO relies on existing USCIS regulations, the applicable precedent decisions, and the legislative history of the enabling and declaratory statutes, as an indication of Congressional intent. Additionally, the AAO follows internal agency memoranda. Such memoranda may aid in the interpretation of the specialized knowledge standard, but the memoranda are intended as internal guidelines for USCIS personnel and do not establish judicially

enforceable rights. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000); *see also 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)).

A. *History of the Specialized Knowledge Definition*

The AAO finds that the history of the L-1B specialized knowledge category is critical to understanding the applicable standard in this case.

The L-1 intracompany transferee visa classification was created by Congress through the Immigration Act of 1970. Pub.L. 91-225, § 3, 84 Stat. 117 (Apr. 7, 1970). Congress created the L-1 visa classification after concluding that "the present immigration law and its administration have restricted the exchange and development of managerial personnel from other nations vital to American companies competing in modern-day world trade." *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815 (Leg. Hist.). To address the problem, Congress created the L-1 visa and noted that the "amendment would help eliminate problems now faced by American companies having offices abroad in transferring key personnel freely within the organization." *See generally id.*

Congress did not define "specialized knowledge" in the Immigration Act of 1970, nor was it a term of art drawn from case law or from another statute. *1756, Inc. v. Attorney General*, 745 F.Supp. 9, 14 (D.D.C., 1990).

The legislative history of the Immigration Act of 1970 does not elaborate on the nature of a specialized knowledge employee; instead the House Report references executives, managers and "key personnel." Regarding the intended scope of the L-1 visa program, the House Report indicates:

Evidence submitted to the committee established that the number of temporary admissions under the proposed 'L' category will not be large. The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service.

H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. at 2754.

After the creation of the L-1B nonimmigrant classification, legacy INS developed a body of binding precedent decisions which attempted to clarify the meaning of "specialized knowledge," in the absence of a statutory definition. *See Matter of Raulin*, 13 I&N Dec. 618 (Reg. Comm. 1970); *Matter of Vaillancourt*, 13 I&N Dec. 654 (Reg. Comm. 1970); *Matter of LeBlanc*, 13 I&N Dec. 816 (Reg. Comm. 1971); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Colley*, 18 I&N Dec. 117 (Comm. 1981); *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982); *Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988).

As it gained administrative experience with the visa classification, the INS promulgated two successive definitions of the term by regulation. First, in 1983, the INS published a final rule adopting the following definition of "specialized knowledge" at 8 C.F.R. § 214.2(I)(1)(ii)(C) (1984):

"Specialized knowledge" means knowledge possessed by an individual which relates directly to the product or service of an organization or to the equipment, techniques, management, or other proprietary interests of the petitioner not readily available in the job market. The knowledge must be relevant to the organization itself and directly concerned with the expansion of commerce or it must allow the business to become competitive in the market place.

48 Fed. Reg. 41142, 41146 (September 14, 1983).

In 1987, less than four years later, the INS provided a modified definition at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988) to "better articulate case law" relating to the term:

"Specialized knowledge" means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organization's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

52 Fed. Reg. 5738, 5752 (February 26, 1987).

In 1990, Congress acted to end the agency's varying interpretations of the term "specialized knowledge." Through the Immigration Act of 1990, Congress provided a statutory definition of the term by adopting in part and modifying the 1987 INS regulatory definition. Immigration Act of 1990, Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Congress adopted the "advanced knowledge" component of the INS definition but deleted the bright-line "proprietary knowledge" element and the requirement that the knowledge be of a type "not readily available in the United States labor market."

In enacting these changes, Congress did not otherwise attempt to modify the agency's interpretation as to what constitutes specialized knowledge. In its effort to clarify the term specialized knowledge, Congress did, however, add an ambiguous and circular component to the definition by stating that an alien is considered to be serving in a "capacity involving specialized knowledge" if the alien has a "special knowledge" of a petitioner's product.

Specifically, Congress enacted the following definition:

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.

Section 214(c)(2)(B) of the Act, as created by Pub.L. No. 101-649, § 206(b)(2).

Regarding the new statutory definition, the legislative history indicates that Congress found the L-1 visa had allowed "multinational corporations the opportunity to rotate employees around the world and broaden their exposure to various products and organizational structures" and that it had been "a valuable asset in furthering relations with other countries."

In light of this experience, the House Committee stated that the category should be "broadened" by making four enumerated changes: first, Congress allowed accounting firms to have access to the intracompany visa even though their ownership structure had previously precluded them from the classification; second, Congress incorporated the "blanket petition" available under current regulations into the statute for maximum use by corporations; third, Congress changed the overseas employment requirement from a one-year period immediately prior to admission to one year within the three years prior to admission; and fourth, Congress expanded the period of admission for managers and executives to seven years to provide greater continuity for employees. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 (Leg. Hist.).

In a separate paragraph, outside of the previous paragraph discussing the enumerated provisions that "broadened" the L-1 classification, the House Report discussed the new definition of "specialized knowledge." The paragraph stated in its entirety:

One area within the L visa that requires more specificity relates to the term "specialized knowledge." Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company. The time limit for admission of an alien with specialized knowledge is five years, approximately the same as under current regulations.

Id.

In 1991, the INS proposed and adopted "a more liberal interpretation of specialized knowledge" based on the new statutory definition. Closely following the definition provided by Congress, 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.

See 56 Fed. Reg. 61111 (December 2, 1991)(Final Rule).

Since Congress enacted the statutory definition of "specialized knowledge," the agency has issued a number of internal agency memoranda discussing the term specialized knowledge, including the above referenced 1994 [REDACTED] Memorandum, 2002 [REDACTED] Memorandum, and 2004 [REDACTED] Memorandum, the latter of which applies specifically to chefs and specialty cooks seeking L-1B status.

The ██████████ Memorandum of 1994 is often cited as the key agency document relating to the adjudication of L-1B specialized knowledge visa petitions. Addressed to the various directors of the INS operational components, the internal agency memorandum noted that the 1990 Act statutory definition was a "lesser, but still high, standard" compared to the previous regulatory definition and declared that the memorandum was issued to provide guidance on the proper interpretation of the new statutory definition.

The memorandum advised INS officers to apply the common dictionary definition of the terms "special" and "advanced," since the statute and legislative history did not provide insight as to the interpretation of specialized knowledge. Looking to two different versions of *Webster's Dictionary*, the memorandum defined the term "special" as "surpassing the usual; distinct among others of a kind" or "distinguished by some unusual quality; uncommon; noteworthy." ██████████ Memorandum at p.1. The memorandum relied on the same dictionaries to define "advanced" as "highly developed or complex; at a higher level than others" or "beyond the elementary or introductory; greatly developed beyond the initial stage." *Id.* at p.2.

The ██████████ Memorandum provided various scenarios, hypothetical examples, and a list of six "possible characteristics" of aliens that would possess specialized knowledge. Adding a gloss beyond the plain language of the statute or the definitions of "special" and "advanced," the memorandum surmised that specialized knowledge "would be difficult to impart to another individual without significant economic inconvenience." *Id.* at p.3. The memorandum also stressed that the "examples and scenarios are presented as general guidelines for officers" and that the examples are not "all inclusive." *Id.* at pp. 3-4.

The ██████████ Memorandum concluded with a note about the burden of proof and evidentiary requirements for the classification:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, 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.

Id. at p.4.

The ██████████ Memorandum closes by noting that the document was "designed solely as a guide" and that specialized knowledge can apply to any industry and any type of position.

B. The Standard for Specialized Knowledge

The specialized knowledge classification requires USCIS to distinguish between those employees that possess specialized knowledge and those to do not possess such knowledge. Exactly where USCIS should draw that

line is the question before the AAO. 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.

As noted above, counsel specifically relies on the [REDACTED] Memorandum, and subsequent agency memoranda, as a proper guide in determining whether knowledge is advanced or special. However, instead of memoranda, the AAO must look to the specific language of the statutory definition of specialized knowledge.

The first question is always to inquire whether Congress has directly spoken to the precise question at issue. *Chevron U.S.A., Inc., v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.*

As previously discussed, Congress spoke directly to the issue when it created a statutory definition for the term specialized knowledge. However, the definition is less than clear since it contains undefined, relativistic terms and elements of circular reasoning.

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. Although *1756, Inc. v. Attorney General* was decided prior to enactment of 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:

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).

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, USCIS must first determine the baseline of ordinary.

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the canons 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*