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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



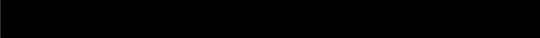
**U.S. Citizenship
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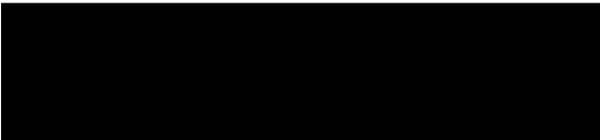
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File: EAC 09 051 51797 Office: VERMONT SERVICE CENTER Date: **FEB 24 2010**

IN RE: Petitioner: 
 Beneficiary: 

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration
 and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a New York limited liability company, performs U.S.-based market research and contract negotiations on behalf of its Japanese parent company, [REDACTED], which is engaged in the design, manufacture and distribution of clothing and accessories. It seeks to employ the beneficiary in the position of Chief Designer for a period of three years.

The director denied the petition, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a capacity requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the grounds for denial of the petition are without merit. Counsel contends that the beneficiary is unique, irreplaceable and fulfills a highly specialized role within the petitioner's organization, and is thus a "perfect candidate" for the requested classification. Counsel submits a brief in support of the appeal.

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

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

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

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on December 8, 2008. In a letter dated November 26, 2008, the petitioner indicated that the beneficiary was hired by the foreign entity as a fashion designer in 2001 and currently performs the following duties:

- Design and develop second-line production to compliment [*sic*] the [REDACTED] collection in the Japanese Market and supervise the Design Team to achieve the sales goals.
- Select materials with factories' staff and design women's shoes.
- Liaise between upper management of [the foreign entity] and [REDACTED] to ensure that our Japanese second-line will fit with [REDACTED] vision.
- Instruct staff members of the Design Team on how to develop designs and embroidery.
- Support [REDACTED] runway shows held in Tokyo as a liaison.

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

[The beneficiary] is a fashion designer of exceptional ability and has superior design skills. She is especially strong in the design of print patterns using Photoshop. [The beneficiary] also has a deep knowledge of clothing design and its manufacturing process and of embroidery. She is also a skilled marketing specialist, who knows customers' demands.

In September 2003, the beneficiary won an in-house award, which is awarded to the best employee who assisted the company's business expansion and development. Her activities as a liaison between [REDACTED] and upper management of [the foreign entity] were especially significant for the award.

She graduated and earned a certificate in Design in 1988 from Chiyo Tanaka College of Fashion Arts, Tokyo, Japan.

As mentioned above, [the beneficiary] has over seven years experience with [the foreign entity] as a chief designer and has a deep knowledge of our brands, thus, she is the best person to be dispatched to the U.S. at this time.

With respect to the purpose of the beneficiary's transfer, the petitioner explained that it currently sells [REDACTED] products through retail stores in Japan which are managed and operated by the foreign entity under a distribution agreement with fashion designer [REDACTED]. The petitioner indicated that the foreign entity intends to start a diffusion brand business under a new license agreement with DVF, under which the foreign entity will design, manufacture and sell apparel, shoes, bags and other women's products that will be derived from DVF products. The petitioner stated that the foreign entity needs to negotiate the development of the diffusion brand for the Japanese market and intends to have the beneficiary lead its efforts.

The petitioner indicated that the beneficiary will serve as chief designer in the United States and will perform the following duties:

- Study and understand the design and manufacturing process of the first brand cooperating with DVA [*sic*].
- Design clothing and accessories for the diffusion brand and also develop new products for the Japanese market.
- Communicate with [the foreign entity's] Design Team members, including pattern makers, merchandisers, and designers for the production of the diffusion brand.
- Conduct market research for the U.S. market, analyze the relating information and report the outcome to upper management of [the foreign entity].

On December 10, 2008, the director issued a request for additional evidence (RFE). The director advised the petitioner that, based on the initial evidence, the beneficiary's role appears to be that of a generalist, rather than a key employee who possesses specialized knowledge. Accordingly, the director instructed the petitioner to submit the following additional evidence: (1) a record from the company's human resources department detailing the manner in which the beneficiary gained her specialized knowledge, including documentation of any training the beneficiary has completed; (2) a more detailed description of the duties the beneficiary will perform as a chief designer, including an explanation as to how such duties require the application of specialized knowledge, and an explanation as to which processes, procedures, tools or methods the beneficiary will use; and (3) information regarding the length of time it takes to train an employee to use the specific tools, procedures or methods utilized by the petitioning organization, and the number of employees who possess this knowledge.

The petitioner submitted a letter from [REDACTED] the foreign entity's executive general manager of corporate planning and human resources, in response to the RFE. [REDACTED] described the beneficiary's specialized knowledge as follows:

[The beneficiary] has designed and has developed the second-line production to compliment [sic] the [REDACTED] collection in the Japanese Market and has supervised the Design Team to achieve sales goals.

The [REDACTED] collection adapts Chinese print patterns and embroidery. [The beneficiary], as a Fashion Designer, has studied such patterns and embroidery over 7 years and has created her own designs for the second-line production. Thus, no one can create such designs and embroidery within [the foreign entity] except for [the beneficiary].

[The beneficiary] has acquired special skills regarding crafts and print pattern designs. [The beneficiary] designs embroidery by hand and scans the designs using a computer. Then, [the beneficiary] traces and colors the designs using Photoshop and sends the designs to an embroidery manufacturer to make a trial product.

[The beneficiary] learnt the operation of Photoshop for print pattern design in one year after joining [the foreign entity]. [The beneficiary] has by now acquired a specialized skill in such design using Photoshop, having spent over 7 years in perfecting her skills. Usually, a clothing material manufacturer develops such print patterns. However, [the beneficiary] has created her own print pattern design for the [REDACTED] collection because the flavor of that collection is very unique. [The beneficiary] has acquired her expertise for Chinese inspired designs from Chinese magazines, historical books and pictures, among other sources. [The beneficiary's] designs have contributed enormously [to] the development of the [REDACTED] collections in Japan and in the U.S.

[The beneficiary] also has excellent communication skills. As mentioned above, [the beneficiary] has been deeply involved with the [REDACTED] collections both in Japan and in the U.S. [The beneficiary] has communicated exclusively with [REDACTED] and her design team in English. That experience has strengthened her communication skills and no one at [the foreign entity] has such well developed skills except [the beneficiary].

In September 2003, [the beneficiary] was awarded the Bronze Prize at the International Sports Fair in Japan. [The beneficiary] designed a suite for speed skating and the concept, unique design, and materials were recognized by the public. This shows that the beneficiary is a creative person in design. . . .

The incumbent will be required to absorb in great detail the concept of designs and the business development of DVF for the Japanese market. Generalists at [the foreign entity] cannot complete the job duties of the position offered because the incumbent has to be a designer with a specialized knowledge of such as clothing materials, [the foreign entity's] products and marketing strategy.

also provided additional explanation regarding the beneficiary's proposed duties in the United States, noting that, as chief designer, the beneficiary "will join DVF's design team to study and understand DVF's original designs, materials and manufacturing process," and "reflect the results of her study and understanding in the collections of [the foreign entity's] products."

██████████ further stated:

[The foreign entity] plans to start a diffusion brand business under a new license agreement with DVF in 2010. . . . Before that business begins, the incumbent will design patterns of clothing for the diffusion brand and new products for the Japanese market. The incumbent will design these patterns using Photoshop. He/she must be especially strong in the design of print patterns using Photoshop.

Since this diffusion brand business will start under the licensing agreement with DVF and [the foreign entity] cannot damage DVF's brand image, the incumbent must be not only a trusted person who is rich in experience at [the foreign entity] and has a deep knowledge of [the foreign entity's] products and marketing strategy, but also a person who is a creative designer.

Finally, the ██████████ expanded upon the beneficiary's responsibility to "conduct market research for the U.S. market," stating:

DVF views Japan as an important market in the world and wishes to further develop DVF's brand in Japan. To do so, DVF needs to have information regarding Japanese fashion markets and trends. The incumbent needs to have a deep knowledge of Japanese fashion trends and market information and he/she will support the development of DVF's brand in Japan based on such knowledge. The incumbent will also conduct market research in both Japanese and the U.S. markets to assist in the development of [the petitioner's] brand and will report the outcome to upper management of [the foreign entity].

██████████ concluded by stating that the beneficiary is the only person who can fulfill the job duties of the position offered.

The director denied the petition on January 13, 2009, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a position requiring specialized knowledge. In denying the petition, the director found that the beneficiary's current and proposed duties, and the knowledge required to perform such duties, "are more universal in the field . . . than specialized." The director emphasized that the beneficiary was hired by the foreign entity already largely knowledgeable and practiced with such skills, while her subsequent employment "merely familiarized her with your method of operation." The director noted that the beneficiary's bilingualism and Photoshop proficiency, while useful and valuable, have "no direct connection to her employer." The director further emphasized that the beneficiary's native talent and creativity as a designer cannot be considered specialized knowledge, and that "insider knowledge of a company's operations does not automatically constitute special or advanced knowledge."

On appeal, counsel for the petitioner asserts that the denial of the petition was not based upon a correct application of the law and that the director's assessment of the facts in the matter is improper according to its previous assessment of similar cases. Counsel emphasizes that the beneficiary's role as a fashion designer has been highly specialized within the foreign entity, and that her position is "unique and irreplaceable."

Counsel asserts that the beneficiary qualifies as a specialized knowledge employee pursuant to the definition at 8 C.F.R. 214.2(l)(ii)(D) because she "has learned and acquired specialized knowledge of [the foreign entity] and in the industry as a fashion designer." Counsel contends that the regulatory definition defines a wide range of specialized knowledge. Counsel further describes the beneficiary's specialized knowledge as follows:

To assume the position offered, first, the incumbent must be a skilled designer in the industry. As mentioned above, [the beneficiary] has been in the industry as a designer over 7 years. As a designer, for example, [the beneficiary] has created her own print pattern design for the [REDACTED] collection that has been used and marketed all over Japan. [The beneficiary] has well understood and continuously learned [the foreign entity's] marketing strategy and the market trends in Japan and other geographic markets. . . . Further, although the [REDACTED] collection adapts Chinese print patterns and embroidery, [the beneficiary], as a Fashion Designer, has studied such unique and distinguished patterns and embroidery over 7 years and has created her own designs for the second-line production. No one at [the foreign entity] can create such designs and embroidery except for [the beneficiary]. As a fair and reasonable conclusion, [the beneficiary] is the most suitable person to be dispatched as an intracompany transferee from [the foreign entity] at this time.

Counsel states that the position also requires an individual who is familiar with the company's service and its products, and emphasizes that the beneficiary "has well understood [the foreign entity's] products and services and is well versed in the industry's market." Counsel notes that the beneficiary "has learned how to deal with famous designers and to develop [the foreign entity's] new brands and products." Counsel contends that "no one at [the foreign entity] is so well vested in such business development with famous designers except for [the beneficiary]."

In addition, counsel asserts that the director narrowly defined the requirements for an intracompany transferee in a specialized knowledge capacity without a lawful reason, noting that the beneficiary "has had specialized knowledge regarding [the foreign entity's] products, marketing strategy, and clothing materials." Counsel stresses that specialized knowledge refers to not only "technical matters" but to "other interests and their applications." Counsel suggests that the analysis applied by the director would be more appropriate for an engineering position.

Counsel concludes by stating that lay persons and generalists could not perform the job duties of the proffered position because the incumbent must be a designer with specialized knowledge of clothing materials, the petitioner's products, and the petitioner's marketing strategy.

Upon review, the petitioner has not demonstrated that the beneficiary has specialized knowledge or that she will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Standard for Specialized Knowledge

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

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

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).¹

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

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

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification

¹ Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

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

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

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

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

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. In other words, specialized knowledge generally requires more than a short period of experience; otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and 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 advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

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. *Id.* At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge.

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, the AAO concurs with the director that the beneficiary's responsibilities are not dissimilar from those normally performed by experienced fashion designers and require the beneficiary to apply creative and technical skills that are commonly found within the profession. The beneficiary's "deep knowledge" of clothing design, the clothing manufacturing process, embroidery, the design of print patterns in Photoshop, her English language

skills, and her experience communicating with a high-level fashion designer, while valuable to the petitioner, cannot be considered "specialized knowledge" that is specific to the petitioning organization.

The petitioner asserts, however, that in addition to these skills, the beneficiary possesses specialized knowledge of the petitioning group's products, marketing strategies, and knowledge of the Japanese fashion industry. The beneficiary is described as a "skilled marketing specialist, who knows customers' demands." However, the petitioner has not defined any specialized marketing duties performed by the beneficiary in the past, nor has it described in any detail the company's marketing strategies and why familiarity with such strategies constitutes specialized knowledge. The director specifically requested that the petitioner identify any company-specific processes, tools, procedures and/or methods the beneficiary uses to perform her duties. The only processes and tools described in the RFE response were the beneficiary's general communication, design, embroidery and Photoshop skills, and industry knowledge, rather than any marketing or product development methodologies, processes or procedures that are specific to the company.

The petitioner repeatedly refers to the beneficiary's knowledge of the foreign entity's "products" as the basis of her specialized knowledge. The petitioner's 2007 business report indicates that the foreign entity's product lines include more than 20 "original brands," and nine "licensed brands," including [REDACTED]. Given this diversity in product offerings, the petitioner's vague reference to its "products," without additional explanation, is insufficient. The petitioner has submitted no supporting documentation to substantiate its claim that familiarity with its products constitutes specialized knowledge. The fact that the foreign entity manufactures and distributes a number of original and licensed brands does not establish that the beneficiary possesses specialized knowledge based on her fashion design experience with the foreign entity. Every company in the petitioning organization's industry realistically has variations in product design and manufacture. As noted by the director in issuing the request for evidence, mere familiarity with an organization's product or services does not constitute specialized knowledge under section 214(c)(2)(B) of the Act.

The petitioner has not supported its claim that the beneficiary possesses knowledge that can be gained only with the foreign entity, or that the position requires such knowledge. Specifically, the petitioner has neither explained nor documented why the knowledge required to design and market its fashion products would be different from that required to design and market any apparel in any market. Furthermore, the beneficiary's experience, based on the petitioner's representations, is limited to the foreign entity's second-line production designed to complement the [REDACTED] collection in the Japanese market. Although the beneficiary appears to have held a key role in the design of the [REDACTED] diffusion line, the petitioner indicates that the product line was designed to fit Ms. [REDACTED] "vision" and derived from her Chinese-inspired designs. The beneficiary may have developed embroidery and Photoshop skills related to these designs that are uncommon within the company, but there is no basis to support a conclusion that the beneficiary's skill set is unusual within the fashion industry.

Moreover, even assuming, *arguendo*, that the beneficiary's knowledge of the foreign entity's [REDACTED] product line rises to the level of specialized knowledge, the petitioner has not established that such knowledge would be required for the proposed U.S. position. The beneficiary would be responsible for studying and understanding the design and manufacture of a completely different clothing brand, and designing a new diffusion brand based on the designs of [REDACTED]. The petitioner has not explained how

performance of such duties would require the beneficiary's specific knowledge of the [REDACTED] product line, which, according to the record, has been her sole area of concentration since joining the foreign entity. The position does not appear to require knowledge of any existing product line marketed by the foreign entity. While much emphasis has been placed on the beneficiary's ability to create Chinese-inspired print patterns and embroidery using Photoshop, there is no evidence to suggest that the new DVF diffusion line would require these specific skills. Rather, it appears that the design of an entirely new diffusion brand could be performed by any experienced fashion designer. The fact that the beneficiary has designed a diffusion brand in the past makes her a very good candidate for the position, but, without additional explanation, is insufficient to establish that the proposed role requires the application of specialized knowledge. As noted above, the petitioner must articulate with specificity the nature of the claimed specialized knowledge and describe how such knowledge is typically gained within the organization. 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)).

The AAO concurs with counsel that the petitioner is not required to establish the knowledge possessed by the beneficiary is highly technical or derived from formal training classes. However, it must still demonstrate how knowledge of and experience with company products and marketing strategies 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." It is reasonable to believe that the foreign entity expects all of its fashion designers to be intimately familiar with the vision and targeted markets for their assigned product lines, and to possess the creative, artistic and technical skills necessary to create successful designs. The fact that the beneficiary may have additional communications skills and a specialization in Chinese-inspired designs which enable her to excel in her assigned duties does not establish that the beneficiary's knowledge specific to the petitioning organization is indeed special or advanced.

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, or in this case, the same exposure to the petitioner's products and marketing strategies, then mere possession of such knowledge 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.

All employees can be said to possess unique or uncommon skill sets or experience to some degree. Moreover, any proprietary qualities of the petitioner's product do not establish that any knowledge of such products 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 strategies as applied to one specific product line is not enough to establish the beneficiary as an employee possessing specialized knowledge. While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among a small subset of workers (i.e., the only employee who has developed Chinese-inspired embroidery designs based on Vivienne Tam's "vision") will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce.

The AAO acknowledges the petitioner's claim that the proposed chief designer is a key position that is crucial to the petitioner's success in developing a new licensed product line. However, merely establishing that the beneficiary will undertake a “key” position will not satisfy the petitioner's burden of proof. The petitioner must still submit evidence to establish that the beneficiary has been employed abroad in a position involving specialized knowledge and that she will be employed by the United States entity in a specialized knowledge capacity. *See* 8 C.F.R. § 214.2(l)(3). The AAO notes that the only supporting documentary evidence submitted in support of the petitioner's claims regarding the beneficiary's specialized knowledge is an example of one of her designs and a business report for the foreign entity. Upon review, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any evidence that would allow the AAO to evaluate the claim. The petitioner's response to the director's request for evidence consisted solely of a letter from the petitioner that provided little new information, and the above-referenced work product example. On appeal, the petitioner essentially re-states the unsupported assertions made in response to the director's request for evidence. 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.

The AAO does not dispute 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 designers employed by the petitioning organization or by workers employed elsewhere. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's products is more advanced than the knowledge possessed by others employed by the petitioner, or that the products and strategies developed by the petitioner are substantially different from those developed by other fashion 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. Furthermore, as discussed above, the petitioner has not explained how the proposed position requires the application of the specific knowledge the beneficiary is claimed to possess.

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 petition will be denied.

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.

ORDER: The appeal is dismissed.