

**data deleted to
prevent clearly unwarranted
invasion of personal privacy**

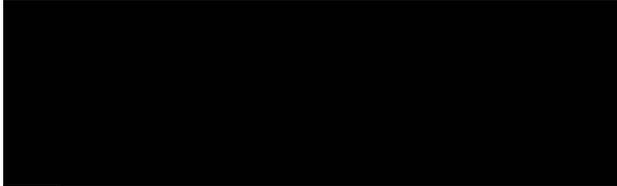
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

D7



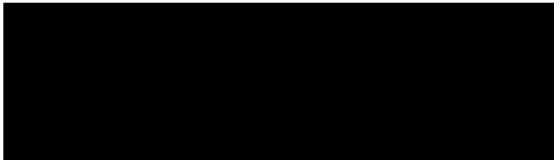
File: EAC 08 256 50681 Office: VERMONT SERVICE CENTER Date: **FEB 24 2010**

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 is a not-for-profit organization established under the laws of the District of Columbia. The petitioner is self-described as a global alliance of individuals and organizations dedicated to building a world of peace. It has regional branch offices worldwide, including an office in Tokyo, Japan. It seeks to employ the beneficiary in the position of international relations officer for a period of three years, based at its International Secretariat Office in Tarrytown, New York.

The director denied the petition on December 3, 2008, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that she has been and 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 beneficiary has advanced knowledge of the petitioner's "proprietary methods of reaching people of differing cultural religious and linguistic backgrounds with a message of peace and encouraging specific performance on their parts in the acquisition of lasting peace in various nations and/or international regions." Counsel submits a detailed 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 September 30, 2008. The petitioner indicated that the beneficiary has been employed by its regional office in Tokyo, Japan since April 2007 in the position of international relations officer.

In a letter dated September 17, 2008, the petitioner stated that the beneficiary would perform the following duties as an international relations officer in the United States:

- Communicating and liaising with all of our national chapters throughout the world.
- Managing and overseeing online inquiries from the general public, as well as our international project participants;
- Creating various reports for [the petitioner] in order to monitor our progress in the world;
- Collecting materials and other information regarding [the petitioner's] activity for inclusion in our various newsletters;
- Tracking and monitoring [the petitioner's] programs conducted by all of our regional chapters;
- Organizing and arranging conferences in the US and abroad;
- Aiding in the planning, development and coordination of the Global Peace Festival.

The petitioner indicated that the beneficiary performs essentially the same duties in her role as an international relations officer for the petitioner's Tokyo, Japan office, where she "has acquired valuable skills in international negotiations as well as an intimate understanding of our organization's goals, policies and objectives – most of which we consider highly proprietary in nature."

The petitioner also submitted a letter dated July 31, 2008 from [REDACTED] of the foreign entity, who further described the beneficiary's current duties as the following:

[S]he is responsible for communicating with [the petitioner's] Headquarters and other national chapters, managing online inquiries sent from [the] general public and regular project participants mostly within Japan and also in other countries. She's responsible for creating reports such as biannual progress reports to the founder and Co-Chairman of [the petitioner] and special reports on activities of [the foreign entity] on occasion. [The beneficiary] also writes articles for the monthly newsletter of [the foreign entity], *Heiwa Taishi (Ambassadors for Peace)* published for the Ambassadors for Peace (those who have been awarded as an Ambassador for Peace for their high achievement in working for world peace), partners, participants and the general public. She is responsible for collecting materials and writing about [the petitioner's] activities in other countries for the newsletter. From the latter half of 2007, she contributed to developing GPF-Japan by providing innovative ideas for setting key goals and concepts for GPF ongoing programs and building new monitoring and reporting schemes. She became responsible for tracking and monitoring GPF programs conducted by regional chapters of [the foreign entity]. Her insights and devotion to ensuring the programs being monitored regularly and coordinated for the vision of GPF was particularly impressive and beneficial for measuring progress of the project as a whole when the operation of its ongoing program is scattered in several regions in Japan.

stated that the beneficiary is being reassigned to the United States to work for the petitioner's Global Peace Festival project, where she "will contribute to raising the standard of GPF world-wide." He emphasized that the beneficiary "has extensive knowledge about the project" and can fill the position without the need for any additional training. He further stated:

I recognize her as the most qualified and appropriate person for the position at [the petitioner's headquarters] because of her outstanding foreign language skills, abundant international experiences of living and participating in peace-building projects, and her ability to understand, communicate and work with people from different national and cultural backgrounds.

On October 6, 2008, the director issued a request for additional evidence (RFE). The director advised that the initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge or that she will be employed in a position requiring specialized knowledge. The director instructed the petitioner to submit, *inter alia*: (1) probative evidence showing that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor; (2) the beneficiary's resume and training records; (3) evidence that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; (4)

organizational charts for the U.S. and foreign entities; and (4) a statement describing in detail the specialized knowledge the beneficiary possesses.

In a letter dated November 14, 2008, the petitioner emphasized that the beneficiary "is in no way simply a 'skilled worker.'" The petitioner further described the beneficiary's specialized knowledge as follows:

Review of the pertinent regulation . . . reveals that [the beneficiary] possesses specialized knowledge of our organization's service, research, techniques, management and other interests that [the petitioner] has worldwide. She also possesses a very advanced level of knowledge and expertise in [the petitioner's] processes and procedures.

* * *

As our International Relations Office[r], [the beneficiary] will be given the immense responsibility of handling all of our international relations duties between our worldwide headquarters in Tarrytown, New York and all of our affiliates throughout the world. It is a fact that outside of Asia, English has become a standard second language in many developing nations. In Asia, however, the English speaking abilities of our partners is seriously lacking, and [the beneficiary] is key in addressing those concerns as she is fluent in Japanese, Korean, Thai, and, of course, English.

The petitioner reiterated the job duties provided in its initial letter, and emphasized that performance of such duties requires "a deep understanding of [the petitioner's] goals in effectuating peace throughout the world" and "an acute sensitivity to the cultural differences of all the individuals she communicates with." The petitioner indicated that the beneficiary "represents [the petitioner's headquarters] to the world" and "must be able to facilitate peaceful exchanges." The petitioner further discussed the beneficiary's qualifications:

Again, it is not only the language skills that make [the beneficiary] perfectly and legally suitable for the proposed position, but her entire life experience. During the twenty-four years of [the beneficiary's] life, she has actually resided . . . in four different countries. In addition, she has spent significant time visiting 11 countries, and these experiences shaped her understanding of the world and cultural differences in a way that makes her exactly suited for the offered position at [the petitioner].

To work as our International Relations Officer at our worldwide headquarters means that she will be spending great amounts of time communicating with our affiliates from all around the world involving huge events All of these events require a competent individual with specialized knowledge of how these events fit within out [sic] organizational goals in order for them to be effectively carried out.

[The beneficiary's] specialized knowledge and abilities include her possession of critical knowledge about [the petitioner's] world goals that are invaluable to us as an organization – how to bring peace, how to deliver an effective peaceful message, and, most importantly,

how to encourage others to effectively communicate that message to our participants such that it leads to actual, measurable, positive change in the world.

The petitioner further stated that the beneficiary is "uniquely qualified" for the position and a "once-in-a-lifetime candidate" for the position, because she "possesses an extraordinary ability to work with people from all countries and every type of cultural background." The petitioner provided a detailed background of the beneficiary's life experiences, noting that such experiences are "training that could never be duplicated in the classroom or even through extensive field exercises." In addition, the petitioner emphasizes that the beneficiary is open-minded, able to embrace all sorts of cultures and ways of life with respect, and "is very comfortable communicating with people in developing countries." The petitioner further stated:

This kind of sensitivity in character, that I have seen displayed in thousands of ways in her communication abilities, exactly defines how we want our International Relations Officer to present [the petitioner] to our affiliates and the world. In a nutshell, she is our ambassador as ambassadors of peace. That kind of cultural sensitivity and deftness of international communicating ability just cannot be taught; therefore we could never simply hire a U.S. worker and train that person to take on the proposed position.

* * *

[The beneficiary] can see even small things from a word used in our activity reports or news articles about developing countries that people from developed countries would not notice because she was brought up in such a developing nation. We have never met anyone with the type of specialized abilities that [the beneficiary] possesses.

The petitioner went on to provide a detailed description of the skills and knowledge required to perform each of the beneficiary's proposed job duties. The petitioner indicated that the beneficiary will spend 20 percent of her time "communicating and liaising with all of our national chapters throughout the world," a duty which requires the beneficiary's language skills and "a basic instinct and understanding of the entire cultural situation . . . surrounding the communication, itself." The petitioner noted that it requires the beneficiary "due to her understanding and appreciation of the many cultures that our organization must communicate with in order to effectively champion our goals for world peace," and "to make reports and proposals that are balanced, fair and respectful." In addition, the petitioner emphasized that the beneficiary is "intimately aware of our goals," and "would be a key employee in our organization because she is truly amazing at accomplishing such goal[s] consistently."

The petitioner indicated that the beneficiary will devote another 20 percent of her time to managing and overseeing online inquiries from the general public and international project participants. The petitioner emphasized that it can only afford one international relations officer and it is essential that the position be filled by someone who can communicate in Japanese, Korean and English, in order to manage the volume of inquiries effectively. The petitioner noted that the international relations officer must also be "intimately familiar with [the petitioner's] overall organizational goals and our specific program goals for the Global Peace Festival."

The petitioner stated that the beneficiary will devote ten percent of her time to creating various reports to monitor the organization's progress in the world which requires "a very specialized understanding of how [the petitioner] wants to spread peace throughout the world and how we can improve our efforts." The beneficiary would devote an additional ten percent of her time to "collecting materials and other information regarding [organizational] activity for inclusion in our various newsletters." In this regard, the petitioner indicates that the beneficiary "must have a detailed understanding of the type of message we wish to convey in our various newsletters, brochures and announcements." Another ten percent of the beneficiary's time would be allocated to tracking and monitoring programs conducted by regional chapters, including direct contact with leaders of overseas organizations. The petitioner indicated that the beneficiary is qualified to perform this duty based on her understanding of the petitioner's goals and "her incredibly sharp, astute, and perceptive ability when communicating with those leaders."

The petitioner indicated that the beneficiary would also devote 10 percent of her time to organizing and arranging conferences in the United States and abroad. The petitioner emphasized that the beneficiary, in her role with the foreign entity, "has acquired valuable skills in international negotiations as well as an intimate understanding of our organization's goals, policies and objectives – most of which we consider highly proprietary in nature because it takes extensive time and dedication to truly understand the how [*sic*] we wish to accomplish world peace."

Finally, the petitioner indicated that the beneficiary will devote the remaining 20 percent of her time to aiding in the planning, development and coordination of the Global Peace Festival, and noted that she had experience in organizing large events during her tenure with the foreign entity.

The director denied the petition on December 3, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a position requiring specialized knowledge. In denying the petition, the director found that the position appears to require skills and proficiencies that are basic to any international relations officer position, rather than any specialized or advanced knowledge that is specific to the petitioning organization. The director noted that the beneficiary has not completed any training during her employment with the organization, thus raising doubts regarding the complexity and specialized nature of any organization-specific knowledge she might have gained. The director further found that the evidence of record did not establish that knowledge of the petitioner's internal methods, policies or procedures rises to the level of specialized knowledge that is uncommon and more advanced than similarly experienced workers in the beneficiary's field. The director stressed that "insider knowledge of a company's operations does not automatically constitute special or advanced knowledge," as "any job training at any company will provide any employee with knowledge about the procedures that are germane to that organization."

On appeal, counsel for the petitioner asserts that the denial of the petition was legally and factually incorrect. Counsel asserts that the petitioner maintains that "there is nobody that it has ever met in the world with the specialized qualifications that [the beneficiary] brings to the table both as a result of her extensive training and experience she has received while working for [the foreign entity] and through her own intrinsic skills, abilities, and upbringing."

Counsel suggests that by determining that the beneficiary is merely a skilled worker, the director diminished the importance and complexity of the duties she performs as an international relations officer. Counsel notes, for example, that the beneficiary's responsibility for communicating with the petitioner's national chapters worldwide "requires that [the beneficiary] 'put on her international relations cap' which differs for each and every organization she must communicate with while simultaneously adhering to [the petitioner's] mission of peace and sensitivity," and "adjust instantly to very sensitive and delicate social, cultural and language-related differences, nuances and methods of communication." Counsel asserts that the beneficiary "has such an astute, sharp, and accurate understanding of [the petitioner] that nobody [the petitioner's] officers have ever met, trained, worked with, or employed can match her abilities, knowledge, and understanding."

Counsel further asserts:

[The beneficiary] has advanced knowledge of [the petitioner's] developed proprietary methods of reaching people of differing cultural, religious and linguistic backgrounds with a message of peace and encouraging specific performance on their parts This is essential to [the petitioner's] competitiveness in the peace brokering industry – one not occupied by very many organizations to begin with. This is knowledge that can only be gained through experience with [the petitioner] as a trusted member of [the petitioner] and absolutely cannot be easily transferred or taught to others.

Counsel also responds to the director's observation that "the beneficiary was able to function within [the petitioner's] methodologies and procedures immediately after joining the foreign entity." Counsel contends that "only a top, small percentage of International Relations Officers could perform the duties . . . and here is why: [the beneficiary's] background makes her particularly unique." Counsel notes that the petitioner explained at length "how [the beneficiary] was so uniquely qualified even before her employment with [the foreign entity] commenced and specifically how those qualifications were built upon by [the foreign entity] through her employment there"

Counsel contests the director's findings with respect to the beneficiary's lack of "training classes" with the foreign entity, asserting that "there are no classes dedicated to teaching peace production and marketing," and "no classes that can teach people about being sensitive to developing nations who struggle daily." Counsel maintains that the beneficiary's "classes were essentially her life before she got to [the petitioner]: Her time in Thailand, Korea, Japan, the United States and England is a part of this."

Counsel explains that the beneficiary's "extensive training and exposure to proprietary operations commenced very soon after her arrival at [the foreign entity]," because she was hired "with the equivalent of an advanced degree in life and cross-cultural sensitivity." Counsel states that the foreign entity "built upon her prior experiences by teaching and introducing her to its internal and proprietary methods of spreading peace and love and harmony through the world," and "continues to share . . . everything about its core goals in making the world a better place to live"

Counsel requests that the AAO review the entirety of the record and consider the fact that the petitioning organization is not a typical "for-profit" company in determining whether the beneficiary possesses specialized knowledge.

Upon review, the petitioner's assertions are not persuasive in demonstrating 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.

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.

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

concur with the director that the beneficiary's responsibilities are not dissimilar from those normally performed by employees of comparable organizations and require her to handle various types of internal and external communication, perform data collection, prepare reports and assist with the organization of events. The petitioner asserts, however, that due to the unique nature of its peace-brokering mission, the role could not be performed by the typical skilled worker trained in international and public relations, but rather requires language skills, cultural sensitivity, cultural understanding, and other intrinsic talents unique to the beneficiary, as well as knowledge of the petitioner's "mission statement, goals and particular system of international relations in promoting [its] goals."

The AAO will first address whether the beneficiary's "intrinsic abilities" have any bearing on a determination as to whether she possesses specialized knowledge. The record shows that the beneficiary speaks four languages, has resided in four different countries, has traveled extensively to different parts of the world, and has a record of participation in international peace projects and service projects. The petitioner emphasizes that the beneficiary is open-minded, able to embrace all sorts of cultures and ways of life with respect, and "is very comfortable communicating with people in developing countries." While these are all admirable qualities and consistent with the petitioner's own mission statement, the AAO cannot find that the beneficiary's life experiences and innate abilities, which the petitioner claims are absolutely essential to her performance as an international relations officer, constitute specialized knowledge specific to the petitioning organization. The petitioner may find the beneficiary to be a perfect fit for their organization based on the talents, skills, life experiences, and shared viewpoints she possessed when she was hired, and may even deem these qualities to be impossible to find in another individual. However, these personal traits do not establish the beneficiary's eligibility for L-1B classification.

The petitioner emphasizes that it is the combination of the beneficiary's innate skills, talents and experiences and her knowledge of the petitioner's "mission statement, goals and particular system of international relations in promoting organizational goals" and "proprietary method of spreading peace and love and happiness" which makes the beneficiary's knowledge truly advanced and specialized. The AAO notes that while the petitioner devoted several pages of explanation regarding the beneficiary's life experiences gained prior to joining the foreign entity, the petitioner has not explained in any detail the "system of international relations" or "proprietary methods" it uses to achieve its peace-brokering goals, or how the beneficiary's knowledge of such system is advanced within the organization. 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 that it offers classes or other formal training to its employees, but it must still demonstrate how knowledge of and experience with its internal systems, methods and procedures 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 stating that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." The petitioner's goals and mission statement are set forth in the organization's published documentation, which is readily available to the public. While the petitioner indicates that the

beneficiary embraces and supports the petitioner's goals, and is able to effectively communicate and further these goals, the petitioner has not explained how knowledge of the petitioner's goals and mission statement would rise to the level of specialized knowledge.

The proprietary specialized knowledge in this matter is also stated to include proprietary goals, policies and objectives, and "unique strategies, procedures, operations and objectives." However, based on the petitioner's representations, these goals, objectives, strategies and policies, were readily learned on-the-job by the beneficiary. Presumably, such knowledge could also be readily learned by others who have the requisite international relations background and experience with similar organizations. Furthermore, it is reasonable to believe that the petitioner expects all of its professional and executive-level employees to be intimately familiar with its internal processes and methodologies for carrying out its mission. The fact that the beneficiary may have additional language and communications skills and life experiences which assist her in excelling in her 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 internal processes, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during her 18 months of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced based on her innate talents and her life experience is not persuasive. The petitioner must establish that qualities of its strategies, objectives, goals, methods and "system of international relations" require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The petitioner has not provided any information that would assist the AAO in comparing the beneficiary's company-specific knowledge with that of other employees, such that it can be classified as relatively advanced.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself will not equal "special knowledge."² An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

The AAO does not dispute that the beneficiary is a talented employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other non-profit organizations with similar missions. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

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

² As observed above, the AAO notes that the precedent decisions that predate the 1990 Act are not categorically superseded by the statutory definition of specialized knowledge, and the general issues and case facts themselves remain cogent as examples of how the INS applied the law to the real world facts of individual adjudications. USCIS must distinguish between skilled workers and specialized knowledge workers when making a determination on an L-1B visa petition. The distinction between skilled and specialized workers has been a recurring issue in the L-1B program and is discussed at length in the INS precedent decisions, including *Matter of Penner*. See 18 I&N Dec. at 50-53. (discussing the legislative history and prior precedents as they relate to the distinction between skilled and specialized knowledge workers).