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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

b7

File: WAC 09 028 50955 Office: CALIFORNIA SERVICE CENTER Date: FEB 24 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking 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 corporation organized in the Commonwealth of The Northern Mariana Islands, with a branch office located in Tamuning, Guam. The petitioning company owns and operates coin activated machines and automated bank teller machines. It seeks to employ the beneficiary in the position of senior electronics technician at its Guam office for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director observed that the petitioner failed to submit documentary evidence with respect to the beneficiary's specific work experience and training with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge of the petitioner's equipment acquired through four years of training, as well as an advanced level of knowledge of the petitioner's processes and procedures. Counsel submits a brief and additional evidence in support of the appeal.

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

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was

> managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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

> 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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 18, 2008. The petitioner stated that the beneficiary has been employed by the petitioner's Saipan office as an ATM Specialist and Computer Technician since April 2004, performing the following duties: "Adjusts & repairs coin, vending, or amusement machines; replaces defective mechanical & electrical parts; collects coins & bills from machines; fills machines with products or money." The petitioner indicated that the beneficiary will perform the same duties as a senior electronics technician at the petitioner's Guam office.

In an attachment to Form I-129, the petitioner further described the beneficiary's qualifications as follows:

> [B]oth the foreign affiliate and the proposed U.S. employer utilize confidential and proprietary processes and procedures in servicing coin-operated amusement machines and most especially bank-teller ATM machines. [The beneficiary] has an in-depth knowledge of this employer's confidential information and is therefore being petitioned under the L-1B intra-company Transferee category.
>
> * * *
>
> As a Senior Electronics Technician at [the U.S. entity], [the beneficiary] will be required to apply his specialized knowledge and training in computer and electronics, to the unique area of servicing and maintaining Automated Teller Machines and Coin-Operated Amusement Machines. . . .

> As noted, there are very sophisticated computerized systems involved in these machines, all of which handle cash transactions; and in particular, the ATM bank teller machines have "critical compliance requirements of the Patriot Act, Federal Banking Laws and the safety and security of the identities of the persons using the ATMs."

The petitioner also submitted a copy of the beneficiary's employment offer for the Guam-based position, in which his proposed duties are described as the following:

> You will be required to apply your specialized knowledge and training in computer and electronics to oversee the installment, maintenance, repair and adjustments for all automated teller machines and coin operated amusement machines owned and operated by the Company on Guam. You will be responsible for collecting coins and bills from the machines, preparing invoices, and settling accounts with concessionaries. You will ensure that the machines are filled with products, money or other supplies. You will inspect and test the machines and meters to determine whether there are any malfunctions that require repair or maintenance. All of your duties must be carried out in compliance with the Patriot Act and Federal Banking Laws to ensure the safety and security of the identities of the persons using our machines.

In addition, the petitioner submitted an employment verification letter indicating that the beneficiary currently performs the following duties:

> As an ATM Specialist and Computer Technician, [the beneficiary] is responsible for adjusting and repairing coin, vending or amusement machines, and replacing any defective mechanical and electrical parts. He is also responsible for collecting coins and bills from machines, filling the machines with product, inspecting machines and meters, and installing machines in compliance with applicable codes. [The beneficiary] is specially trained to work with ATMs and is knowledgeable about those requirements of the Patriot Act and Federal Banking Laws that apply to his job.

The petitioner submitted an organizational chart which depicts the beneficiary as "IT Specialist/League Administrator/ATM Programmer."

On November 17, 2008, the director issued a request for additional evidence (RFE). The director requested that the petitioner provide a more detailed description of the proposed position and explain any special or advanced duties the beneficiary will perform and how such duties are different from those of other workers employed by the petitioner or by other U.S. employers. The director also instructed the petitioner to explain in more detail exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and whether it is used or produced by other employers in the United States and abroad. Finally, the director requested that the petitioner explain how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field.

In a response dated December 17, 2008, counsel for the petitioner stated that the beneficiary's duties will primarily focus on ATMs, "which due to the high level of security, can only be accessed by a few key employees within the company." Counsel further described the beneficiary's duties as follows:

> With regard to ATMs, [the beneficiary] will be responsible for the installation and programming of all the company's new and existing machines on Guam (25% of his time). He will also conduct all repairs and maintenance of the machines. This includes making on-site inspections of each machine to conduct preventative maintenance and perform routine testing using computerized test equipment (25% of his time). . . . In addition, [the beneficiary] will use computerized and electrical equipment to identify and resolve any equipment malfunctions and replace malfunctioning parts (20% of his time). [The beneficiary] will also be responsible for training the ATM Service Trainee, as Petitioner requires three years work experience within the company before an employee is permitted to work on an ATM (10% of his time).

Counsel stated that the beneficiary would spend his remaining time overseeing the installation, programming and maintenance of gaming machines and compiling periodic reports for the petitioner's chief operations officer.

Counsel also provided the following additional information with respect to the beneficiary's specialized knowledge:

> Due to the extremely sensitive nature of the information [the petitioner] is proprietary of, in addition to possessing the requisite background (a degree as a[n] Electronic Computer Technician), [the] Petitioner requires an employee to complete a minimum three (3) year period of in-house training before they are authorized to work directly on any ATMs. Such training includes use of the company's Remote Management System (RMS), programming of ATMs, and company policies and procedures, which involves an elaborate system of checks and balances. This ensures that the identities and accounts of persons using the ATMs remain safe and secure, and that the company is in full compliance with the Patriot Act and Federal Banking Laws.
>
> Such knowledge and its application is at an advance[d] level with respect to [the] Petitioner's processes and procedures. [The beneficiary] has been employed with [the petitioner] for four and one-half years, since April 2004. . . . He is fully trained in using the company's Remote Management System (RMS) and is one of the few key employees authorized to open and directly access ATMs. [The beneficiary] must enter three (3) different levels of passwords and have special keys in order to open the machines. The company also assigns him a high-security laptop that he uses to directly connect with the ATMS. [The beneficiary] can then repair, maintain, or reprogram [a] machine as required. Employees with such high level access and training can copy account numbers, steal customers' identifying information, or even divert funds. For these reasons, the Petitioner must only have a fully trained and trusted employee with specialized knowledge, such as [the beneficiary] to occupy this position. . . .
>
> [The beneficiary's] knowledge, and the application of that knowledge, was acquired during his tenure with [the] Petitioner. Such knowledge, can, of course, be taught to others who possess the

> required background, through training, application, and the accumulation of experience with [the] Petitioner's processes and procedures over a period of time.

Counsel explained that the beneficiary is being transferred to the petitioner's Guam office to replace the current senior electronics technician, who was granted L-1B status in 2007, and stated that no other employee in Guam is qualified for the position.

With respect to the petitioner's products, counsel stated that the petitioner is "the only licensed and bonded private operator of ATMs on Guam" with 11 stand-alone ATM machines and 100 game machines in operation. Counsel stated that the petitioner is expanding its operations and plans to operate 100 ATMs on Guam by 2011. Counsel emphasized that "the failure to obtain [the beneficiary's] services on Guam will severely impede [the petitioner's] ability to function on the Island," and stated that "it would require an additional four years of in-house training for the company to prepare a U.S. employee to fill the position."

The petitioner's response to the RFE included a product brochure for the Tranax "Mini-Bank 1500 Series" ATM. The brochure mentions that "WebRMS is the most comprehensive ATM management tool available," and allows operators to "receive error messages" via "cell phone or via e-mail and access transaction history and cash management reports from any web browser." The petitioner also provided a listing of the locations of the 45 ATMs it owns and operates in Guam and Saipan.

On December 29, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director observed that the petitioner provided no documentation corroborating counsel's claim that the beneficiary completed three years of in-house training, or work assignments focused specifically on the petitioner's RMS, policies and procedures, nor did the petitioner specifically identify the petitioner's policies and procedures. The director concluded that "the lack of specificity pertaining to the beneficiary's work experience and training, particularly compared to others employed by the petitioner and in this industry, fails to distinguish the beneficiary's knowledge as specialized."

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity, and that the legal and factual conclusions reached by the director are in error.

Citing to an unpublished AAO decision, counsel emphasizes that "specialized knowledge" is a "flexible standard that requires adjudication based on the facts and circumstances of each individual case." Counsel addresses the petitioner's policies as follows:

> Fraud, identity theft, and monetary thefts through ATM's is a substantial risk that any ATM operator must safeguard against. The ATM industry has a multitude of regulations and policies, put in place by the federal government and independent entities to ensure that the security and privacy of information is maintained. One such entity is the Accredited Standards Committee X-9 – Financial Services ("ASC X9").

> The ASC X9, also referred to as ANSI X9, is an American National Standards Institute accredited standards committee, and is responsible for the development of all financial service standards in the United States. Petitioner is required by federal law to ensure that its policies and procedures are in full compliance with those standards set by ASC X9. Such standards include the use of the Triple Data Encryption Standard (TDES) and the requirement that companies have documented procedures for various tasks, such as proper encryption key management.

Counsel emphasizes that the beneficiary, as a senior electronics technician, is entrusted with passwords and encrypted keys that give him the security clearance to perform activities that involve the highest risk to ATM operators and are therefore only entrusted to long standing employees within the company. Counsel asserts that all of the beneficiary's activities "must be performed in strict compliance with ASC X9 standards and the company's documented procedures."

Counsel further addresses the beneficiary's specific specialized knowledge as follows:

> In his first year with [the] Petitioner, [the] Beneficiary received and completed substantial training in ASC (or ANSI) X9 standards, TDES encryption key loading, ATM installation and programming, the Remote Monitoring System, and Tranax ATM proprietary systems. Tranax is the marker of the ATM Machines used by [the] Petitioner. . . .
>
> After completing his training, [the] Beneficiary then entered a two year in-house work training period, during which time he was under the supervision of the company's Chief Operations Officer (COO), [redacted] During this two-year period, [the] Beneficiary had to apply the training he had received. He worked together with [redacted] to install and inspect ATMs on-site. [The b]eneficiary utilized the proper security protocols for opening, accessing, and programming the machine. He applied his training to examine the ATMs and determine whether there were any security breaches. He used encrypted keys and passwords to access highly confidential information in the ATM, and when necessary, reprogrammed the machine and reset passwords, all pursuant to ASC X9 standards and company procedures. Only after completing his two year in-house training was [the b]eneficiary authorized to work directly and independently with the ATMs.

Counsel asserts that there are only three people in the petitioner's entire organization that possess the training and experience required for the position, as well as authorization to take custody of the petitioner's "Master Key," a 64-character encrypted code. Counsel states that "access to a Master Key is a privilege narrowly held within the company for obvious security reasons," and evidences the beneficiary's status as a key employee. Counsel asserts that the "beneficiary's combination of in house training and experience. . . .makes his knowledge on how to access and program Petitioner's ATMs specialized," and that "such knowledge can only be gained through years of prior experience with the petitioner.

In support of the appeal, the petitioner submits several articles addressing the issue of ATM fraud and documentation regarding ASC X9 standards. The petitioner also provides a copy of a "Certificate of Completion of Training" presented to the beneficiary on March 30, 2005, which states:

> [The petitioner] recognizes your completion of the first, second and final phase of training provided by Tranax/Nautilus Hyosung ATM Authorized Service Representative. Additionally, you have completed intensive training in the area of key management security, customer identity protection and you are fully qualified to meet all requirements of the ANSI X9 standards.
>
> This document certifies that you have the proficiency and authority to install, program, operate, deploy, troubleshoot and repair of Tranax ATM proprietary systems, including but not limited to TDES encryption key loading, ATM installations. Remote monitoring system, and Tranax on-site warranty repair compliance.

In addition, the petitioner submits an affidavit from [redacted] who states that he was directly responsible for overseeing the beneficiary's training when the beneficiary was hired by the petitioner in 2004. [redacted] states that during the beneficiary's first year with the company, he "received significant training in Tranax ATM proprietary systems and ANSI X9 security standards" amounting to "well-over 800 hours of training through both manuals and personal instruction." [redacted] states that he supervised the beneficiary during his two years of on-the-job training, after which he was authorized to work directly and independently with the company's ATMs.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The Standard for Specialized Knowledge

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

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

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

---

[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.

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

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

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (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. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge specific to the petitioning organization which would distinguish the beneficiary's role from that of other similarly experienced ATM technicians employed in the industry at large. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990). Any qualified ATM technician would reasonably be expected to know how to install, troubleshoot, repair and maintain ATMs, to be entrusted with passwords and keys, and to be familiar with government-and industry-mandated ASC X9 standards for financial procedures and transactions. Similarly, any independent operator of ATMs would reasonably develop internal procedures for protecting customers' identities and privacy according to industry standards.

In response to the RFE, counsel described the beneficiary's knowledge as "proprietary" and asserted that the beneficiary has received a total of three years of in-house training during the course of his employment with the foreign entity, including training in the use of the petitioner's "Remote Management System," programming of ATMs and unidentified "company policies and procedures." The petitioner did not provide any documentation of the training or the company's internal procedures, nor did it identify how the beneficiary's training is noteworthy or not generally provided to practitioners in his field, or explain how the training prepared him to perform duties that are different from similarly employed workers. As such, the director properly determined that the petitioner did not adequately document the specialized nature of the beneficiary's training, nor did it establish how familiarity with the company's policies and procedures rises to the level of specialized knowledge. 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 petitioner now attempts to describe and document the beneficiary's training in more detail on appeal. The beneficiary's training certificate indicates that the beneficiary completed the "first, second and final phase of training provided by Tranax" and "intensive training in the area of key management security, customer identity protection" and is "fully qualified to meet all requirements of the ANSI X9 standard." According to the certificate, the beneficiary is also authorized to "install, program, operate, deploy, troubleshoot and repair Tranax ATM proprietary systems," including TDES encryption key loading, ATM installation, Remote Monitoring System and Tranax on-site warranty repair compliance." The certificate was signed by a Tranax authorized service representative. While the petitioner claims that such training is "proprietary," the training must be considered proprietary to Tranax Technologies, Inc., an unrelated company from which the petitioner happens to purchase its ATMs.[2] Any company operating Tranax ATMs would reasonably employ workers who have received the same training. The exact length and nature of the training has not been specified. The petitioner has stated that the training took one year to complete, but has also stated that it required 800 hours and combined studying manuals and "personal instruction." Regardless, the petitioner has not addressed how the beneficiary's training differed from that normally provided to workers in the beneficiary's field of endeavor, or identified any characteristics of Tranax ATMs that would set them apart from those operated by other manufacturers, such that they have different training requirements.

The second phase of the beneficiary's training, according to the petitioner, involved two years of working on ATMs under the supervision of the petitioner's chief operations officer, which gave the company an opportunity to evaluate the beneficiary's "ability and credibility," to ensure that he could be trusted to work independently. It appears that the beneficiary was otherwise fully qualified to perform the duties of an ATM technician upon earning the above-referenced certificate. While the petitioner's desire to ensure the beneficiary's trustworthiness is understandable, the AAO cannot equate earning the trust of one's employer with the acquisition of specialized knowledge.

Accordingly, despite the petitioner's claim, the record does not establish how, exactly, the beneficiary's knowledge materially differs from knowledge possessed by other ATM technicians employed in the industry at large. The petitioner purchases its ATMs from a large supplier, receives its training from the manufacturer, and operates its ATMs according to industry and federally-mandated standards and guidelines. The record does not establish what qualities of the beneficiary's skills or the petitioner's processes are of such complexity that the impartation of this knowledge amounts to the acquisition of special or advanced knowledge. Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's knowledge cannot be imparted to a similarly experienced and educated ATM technician in a relatively short period of time. Again, the petitioner's desire to observe an employee on the job for two years before allowing him or her to work independently is not relevant to a determination as to whether the beneficiary possesses and the position requires, specialized knowledge.

---

[2] According to information provided on its public web site, Tranax has sold and supported over 100,000 ATM and self-service terminals. *See* http://tranax.com/corporate (accessed on February 9, 2010).

Based on the petitioner's representations, its internal processes are simply customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in ATM installation, troubleshooting and maintenance. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

It is appropriate for USCIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of LeBlanc*, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

The AAO acknowledges the petitioner's claim that the beneficiary is one of only three employees in the organization who has the experience, training and authority to work independently on ATMs and is thus a "key employee." However, the AAO must consider this information in light of the nature of the organization. The petitioner is not primarily an ATM operator. It is described in its company materials as a "full service amusement provider" which operates competitive pool leagues, dart leagues, and coin-operated amusement and vending machines in addition to ATM terminals. Given that the company only operates approximately 40-45 ATM terminals in Saipan and Guam, it has no apparent need for a large staff of trained ATM technicians. Therefore, the fact that the beneficiary is one of few authorized ATM technicians working for the company is not indicative of his possession of specialized or advanced knowledge.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by ATM technicians throughout the industry. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's internal processes, security passwords, and access to a master key does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced technician is not "specialized knowledge." Rather, the petitioner must establish that qualities of the processes, procedures, and technologies 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 outside of the petitioning organization may not have very specific knowledge regarding the petitioner's enterprise is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced and educated worker.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced ATM technician. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced ATM technician. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor. 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.

Based on the evidence presented, the petitioner has not established that the beneficiary has specialized knowledge or that he was or will be employed in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

The AAO acknowledges the petitioner's claim that USCIS previously approved an L-1B nonimmigrant petition filed on behalf of another beneficiary for the position of senior electronics technician at the petitioner's Guam office. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in denying the present request to classify the instant beneficiary as an L-1B specialized knowledge worker.

Finally, the AAO notes that, as of November 28, 2009, it appears that the petitioning company is no longer a qualifying organization. The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business in the United States and at least one other country."

The petitioner is a corporation established under the laws of the Commonwealth of the Northern Mariana Islands (CNMI). Based on the evidence of record, the petitioner's only other location is a branch office located in Guam.

Public Law 110-229, the Consolidated Natural Resource Act of 2008 (CNRA), amended the 1976 Covenant, Pub. L. No. 94-241, sec. 1, 90 St. 263, 48 U.S.C. 1801 note (1976), between the CNMI and the United States to extend the INA to the CNMI beginning on November 28, 2009. Employers in the CNMI are considered U.S. employers on or after that date, and aliens employed in CNMI will no longer be "employed abroad" for immigration purposes. Employment in CNMI prior to November 28, 2009 continues to be considered "employment abroad." *See generally*, Memorandum of Donald Neufeld, Acting Assoc. Dir., USCIS, *Effect of the CNRA, Title VII of Public Law 110-229, Classification of Aliens under Section 101(a)(15)(L) and 203(b)(1)(C)* (November 23, 2009).

If an employer located in the CNMI continues to meet the definition of a qualifying organization pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G) in that there remains a foreign entity as required by that definition (i.e. one that is outside the CNMI/United States), the CNMI employer may petition for qualifying employees who are currently employed in the CNMI. Here, the petitioner's only offices are located in Guam and CNMI and, based on the evidence of record, there is no branch, parent, subsidiary or affiliate doing business outside the United States. Thus, while the beneficiary's employment in the CNMI prior to November 28, 2009 continues to be considered employment with a qualifying foreign organization, it appears that all of the petitioner's

operations are presently located in the United States for immigration purposes. In order to meet the definition of "qualifying organization" there must be a United States employer doing business in the United States and in at least one other country. If this appeal were not being dismissed for the reasons set forth above, this would preclude the petitioner's continued eligibility for the benefit sought.

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.