

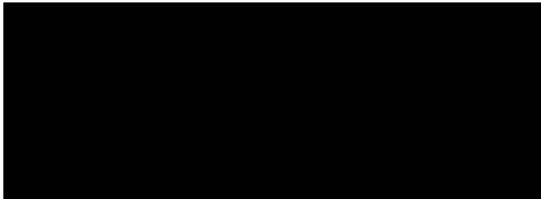
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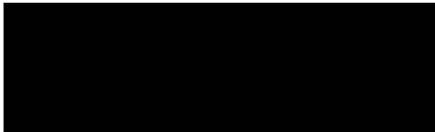


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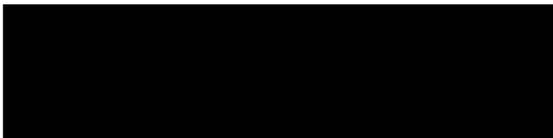
JAN 05 2010

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, Texas 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 in the United States 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, an information technology consulting company, states that it is a wholly-owned subsidiary of the beneficiary's foreign employer, [REDACTED] located in Bangalore, India. The petitioner seeks to employ the beneficiary in the position of technical consultant 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 would be employed in a position 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 for the petitioner assert that the director's decision was based on an improper standard for specialized knowledge and ignored policy guidance set forth in a 1994 legacy Immigration and Naturalization Service (INS) memorandum regarding the interpretation of "specialized knowledge" under the 1990 statutory definition. Counsel submits a brief in support of the appeal.

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

The regulation at 8 C.F.R. § 214.2(1)(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 (1)(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 sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and that he 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 August 18, 2004. In a letter dated August 12, 2004, the petitioner stated that the beneficiary would serve as a technical consultant "utilizing his specialized knowledge of [the petitioner's] proprietary software to assist in the implementation of our client's REVELEUS system." The petitioner further described the beneficiary's proposed duties as the following:

[The beneficiary] will be engaged in the continued development and implementation of the REVELEUS System for our client, the American Stock Exchange, at their offices in New York. [The beneficiary] has been engaged in the development of this system in India, and where he has utilized his knowledge of [the petitioner's] proprietary banking systems software, including PROMOTORTM and PrimeSourcingTM, in the development and implementation of this system. The REVELEUS System is a pre-built, cross functional analytics built from our in-depth banking domain expertise that provides technology solutions for its first enterprise data warehouse. This system gives a powerful set of predefined stock

exchange analytics and a data model, which gives the exchange a significant jumpstart to analysis, empowering its business uses to run queries and reports in an efficient manner. [The beneficiary] will be responsible for setting up end to end BI solutions consisting of technology and business solutions, unified metadata framework and consulting and implementing services. The REVELEUS System uses [the petitioner's] proprietary software and project management information systems, including PROMOTOR™ and PrimeSourcing™, in conjunction with American Stock Exchange corporate audit and compliance testing standards, software platforms and security management systems.

The petitioner stated that the beneficiary has been employed as a technical consultant with the foreign entity since July 1999 and has been engaged in the development and implementation of software systems and products using the petitioner's PROMOTOR™, Primesourcing and REVELEUS proprietary project management and information systems software methodologies and protocols. In addition, the petitioner indicated that the beneficiary has been involved in the implementation of information systems for the client, American Stock Exchange, including "design, development and documentation of functions specifications and software modules of these proprietary software products," and "responsibility for the documentation of technical design specifications and the diagnostic and evaluation testing of quality assurance and audit control software requirements."

The petitioner indicated that the company develops both proprietary and customized information technology systems to support the global banking and financial industry, and development of specialized software projects for the industry. The petitioner stated that "the company's technical consultants utilize [the petitioner's] proprietary project management and information systems methodologies PROMOTOR and PrimeSourcing as well as [the petitioner's] proprietary project and process database, 'QuBase.'"

The petitioner summarized the beneficiary's qualifications as follows:

Throughout his five years of employment with [the foreign entity], the beneficiary has developed advanced and proprietary knowledge of [the petitioner's] products, software, management information systems, and specifications, as well as their application to our client's systems, which will assist the company's competitive position. He possesses knowledge of [the petitioner's] methods of operations, including activities with respect to client service, as well as an advanced and in-depth understanding of all aspects of the international commodities markets and structures. Through his experience with [the foreign entity he] has developed expertise in the business models and software and systems requirements of [the company's] clients. He possesses knowledge and skills that are highly developed and complex and that are not readily available in the United States market. The fact that he has been engaged in the development of the REVELEUS System at [the foreign entity] makes his knowledge of our company and our client's requirements truly specialized.

The foreign entity also submitted a letter from [REDACTED], in support of the petition. [REDACTED] explained that Reveleus is a division of the foreign entity, which provides "pre-built, cross-functional analytics built from our in-depth banking domain expertise." He stated that Reveleus "provides the industry's only metadata-driven information management infrastructure, coupled with a suite of integrated analytical applications for the financial services industry."

[REDACTED] also discussed the foreign entity's training programs as follows:

All employees at [the foreign entity] receive instruction in our proprietary systems and software, including Promotr and QuBase proprietary project management and information systems software methodologies and protocols. The length of initial training varies with the educational and experiential background of each employee. Beyond the initial training, each employee is assigned to a specialized aspect of the client's project.

He explained that employees assigned to the Reveleus division become functional specialists, technical architects, project managers, business intelligence applications developers, or specialize in product quality assurance. [REDACTED] emphasized that such specialization "permits an individual who is versed in one aspect of the Reveleus Suite to be able to provide support in that area across multiple Reveleus projects." He indicated that the beneficiary's training and experience is as a "Business Intelligence Applications Developer" specialized in Reveleus implementations.

On August 30, 2004, the director issued a request for additional evidence (RFE), in which he instructed the petitioner to provide evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the field, and evidence to establish that the beneficiary's knowledge of the company's processes and procedures is apart from the elementary or basic knowledge possessed by others. Specifically, the director requested: (1) evidence relating to the unique methodologies, tools, programs or applications that the company uses and which describes in detail how these are different from those used by other companies; (2) an explanation describing exactly what is the equipment, system, product or technique of which the beneficiary has specialized knowledge; (3) a record from the foreign entity's human resource department detailing the manner in which the beneficiary has gained his specialized knowledge; (4) information regarding the minimum amount of time required to train an employee to fill the proffered position, the number of similarly employed and similarly-trained workers in the organization; and (5) a copy of the beneficiary's resume.

In response, the petitioner submitted the beneficiary's resume and a training summary, apparently prepared by the beneficiary, which indicates that he completed various general technology courses, as well as approximately 15 courses which were described as Reveleus training, since joining the foreign entity in 1999. The exact length and content of the courses was not provided, but the beneficiary indicates that he completed six Reveleus courses in December 2000 and January 2001, and eight Reveleus courses in March and April 2004. According to the beneficiary's resume, he has served as a team member on five Reveleus projects since September 1999. The beneficiary indicates that he is experienced in data modeling, data warehousing, and

data warehouse modeling, and technically proficient in technologies such as C++, C, POSIX Threads, Framework Design, OOAD, RDBMS, Network Programming, Solaris 8, HP-UX 11.x, Unix 5.1, Oracle 9i, SQL Server 2000.

In addition, counsel for the petitioner submitted a letter dated December 2, 2004 in which he asserted that the examples contained in a 1994 legacy INS memorandum strongly support a conclusion in favor of determining that the beneficiary possesses specialized knowledge. Counsel cited two examples and attempted to equate them to the current situation of the beneficiary. See Memorandum from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) Counsel concluded that the petitioner had met its evidentiary burden and that a favorable decision should be rendered. Counsel further stated:

[T]he beneficiary has been engaged in the development and implementation of the company's software systems and products using [the petitioner's] proprietary project management and information systems software methodologies and protocols. During this period, he has also been engaged in the development and implementation of business intelligence and analytical applications for [the petitioner's] Reveleus Division. The beneficiary has been involved in the design, development and documentation of functions specifications and software modules of these proprietary software products, including responsibility for the documentation of technical design specifications and the diagnostic and evaluation testing of quality assurance and audit control software requirements. His duties are exactly those of the example in the Puleo Memo. The foreign parent manufactures a proprietary technology project. The beneficiary is familiar with the procedures in the use and service of the product, which has not only has enhanced the employer's productivity and financial position, but which can only be gained through experience with the employer.

The director denied the petition on December 14, 2004, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary will be employed in a capacity involving specialized knowledge. The director determined that the beneficiary's duties appear to require knowledge that is common among technical consultants employed by the petitioner's organization and that is not significantly different from that held by other technical consultants working in the petitioner's industry. The director noted that the petitioner had not provided specific information regarding the number of employees within the company with similar training and experience, and it could not be concluded that the beneficiary's training has imparted to him knowledge which would be considered advanced or truly specialized, or otherwise noteworthy or uncommon within the organization. Citing to *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the director noted that the specialized knowledge classification was not intended for "all employees with any level of specialized knowledge," but rather for "key personnel."

On appeal, counsel for the petitioner asserts that the director's decision "does not comply with nor utilize the definition of Specialized knowledge contained in the Immigration and Nationality Act as amended in 1990, nor does it conform with the March 9, 1994 memo from James A. Puleo." Counsel further asserts that the director

erred by citing to *Matter of Penner*, noting that such decision was "overturned by Congressional amendment to the definition of Specialized Knowledge in 1990 and is no longer valid legal authority." Counsel asserts that there is no requirement that the beneficiary's knowledge be uncommon within the petitioning company, but only uncommon within the industry. Counsel emphasizes that "training in the petitioner's proprietary operations" cannot be considered common in the industry

The Standard for Specialized Knowledge

In determining what constitutes specialized knowledge, the standards by which the AAO is bound are those set forth in the statutory definition of specialized knowledge itself, as provided at section 214(c)(2)(B) of the Act, USCIS regulations, and applicable precedent decisions. When a statute is ambiguous, Congress has left a gap for the agency to fill. See *Chevron USA Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 843-44 (1984). In interpreting section 214(c)(2)(B), the AAO must rely on existing USCIS regulations, the applicable precedent decisions, and the legislative history of the enabling and declaratory statutes, as an indication of Congressional intent.

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)).

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.

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.

Counsel asserts that the precedent decision cited by the director was improperly applied, since that decision interpreted a pre-1990 definition of specialized knowledge and was superseded by the Immigration Act of 1990. The AAO notes that precedent decisions that predate the 1990 Act are not categorically superseded by the statutory definition of specialized knowledge. The AAO generally presumes that Congress is knowledgeable about existing law pertinent to the legislation it enacts. *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988). Indeed, the Ninth Circuit Court of Appeals recently concluded that the AAO's reliance on such authority was appropriate. *Brazil Quality Stones v. Chertoff*, --- F.3d ---, 2008 WL 2675825

n.10 at *4 (9th Cir., July 10, 2008).

Although the cited precedent pre-dates the current 1990 Act, the AAO finds it instructive. While the underlying definition of specialized knowledge that was discussed in the decision is now superseded by the statutory definition, the general issues and the case facts themselves remain cogent as examples of how the INS applied the law to the real world facts of individual adjudications. For example, 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 knowledge workers has been a recurring issue in the L-1B program and is discussed at length in 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).

Accordingly, the director's citation of a precedent that predates the Immigration Act of 1990 is not objectionable, as long as the director's decision is narrowly tailored to address issues that were not directly superseded by the statutory definition. If the director were to apply the precedent decision in support of a "proprietary knowledge" requirement or a reference to "knowledge not available on the U.S. labor market," then the use of the precedent would be objectionable. The director, however, did not do so in this case.

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

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

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.

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

In the present matter, the petitioner provided an abbreviated description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a technical consultant. Despite specific requests by the director for evidence that would support a finding that the beneficiary's knowledge and experience is uncommon or noteworthy, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner, through counsel, repeatedly states throughout the record and again on appeal that the beneficiary performs a multitude of complex and highly technical job duties for the petitioner, the nature of which are not fully understood by USCIS. Counsel for the petitioner continually asserts that the beneficiary possesses specialized knowledge as a result of his five years of experience as a technical consultant and that such knowledge is far beyond that commonly found throughout the industry. Counsel further alleges that the time the beneficiary devoted to the REVELEUS project and his time spent working as a Business Intelligence Applications Developer in the Reveleus Division during this period has further developed his specialized knowledge. The record prior to adjudication, however, is devoid of evidence that would corroborate the assertions of counsel. Without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director's request for evidence was extremely specific. In fact, the director's request directly quoted characteristics identified by the 1994 Puleo memorandum as indicative of an alien's specialized knowledge, which requested clarification that the beneficiary's claimed specialized knowledge was not merely general knowledge held commonly throughout the industry. The director, therefore, was clearly acting in accordance with the Puleo memorandum and afforded the petitioner all available measures to supplement the record with additional evidence. In addition to directly quoting points highlighted in the Puleo memorandum, the director's request advised the petitioner that examples of acceptable evidence included copies of certificates, personnel records, and/or letters from authorized representatives of the petitioner attesting to classroom and/or

on the job training. Although specifically requested by the director, the record contains little evidence of the beneficiary's training, experience, daily duties, or level of expertise, and no information that would allow USCIS to determine whether the beneficiary's knowledge of the petitioner's processes and procedures is advanced, or whether knowledge of the petitioner's products alone would constitute specialized knowledge. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, counsel for the petitioner failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the foreign entity. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, counsel requests that the AAO accept his uncorroborated assertions that the beneficiary possesses specialized knowledge. As previously stated, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. 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's claim that the beneficiary is qualified for the benefit sought appears to be based primarily on the fact that the beneficiary works on a proprietary product as a member of the Reveleus division of the company. Therefore, the AAO must determine whether knowledge of and experience with the petitioner's proprietary product and related project tools such as Promotor and QuBase, constitutes specialized knowledge. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced."

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

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

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

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney*

General, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally* H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). 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. Accordingly, based on the definition of "specialized knowledge" and the Congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other technical consultants is its assertion on appeal that the beneficiary's duties, as set forth in the petitioner's letter submitted with the initial petition, are directly akin to those set forth in the Puleo memorandum. Again, the petitioner has not provided any information that would allow the AAO to compare the beneficiary's experience and training to that of other technical consultants employed by the petitioner. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of REVELEUS and other software systems as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The claim that the beneficiary has been employed by the petitioner for five years and that most of this period was devoted primarily to work on the REVELEUS system does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for similar period of time.

The record contains little explanation or documentary evidence regarding the REVELEUS product, or what sets this product apart from similar products developed by other companies in the petitioner's field. Similarly, the petitioner did not attempt to explain or document how its processes and methodologies differ significantly from those utilized by other companies offering software consulting services and solutions in the same field. The petitioner has not specified the amount or type of training its technical staff members receive in the company's products, tools and procedures and therefore it cannot be concluded that its processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. Finally, the petitioner has not articulated or documented how specialized knowledge is typically gained within the organization, or explained how and when the beneficiary gained such knowledge. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by other employees of the petitioning organization. The fact that the beneficiary and a select group of workers possess a very specific set of skills does not alone establish that the beneficiary's knowledge is indeed special or advanced. 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 technical consultant is not "specialized knowledge." Rather, the petitioner must establish that qualities of the processes, procedures, or products 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. Furthermore, based on the petitioner's representations, each technical consultant within the petitioner's organization is expected to develop a specialization. Given this scenario, it appears that any technical consultant employed by the petitioner's group of companies would be deemed to have specialized knowledge. 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 petitioner must establish that qualities of the particular process or product require an individual to have knowledge beyond what is common among its workforce, or to establish that the beneficiary has advanced knowledge of the product. This has not been established in this matter. While the AAO does not discount the fact that the beneficiary is a skilled technical consultant and that he is qualified for the position offered, the petitioner did not distinguish the beneficiary in terms of his training and experience and the record remains devoid of information that would support a conclusion that the beneficiary possesses knowledge beyond what is ordinary among the petitioner's workforce. 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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.