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



U.S. Citizenship
and Immigration
Services

D-7



File: WAC 08 232 51351 Office: CALIFORNIA SERVICE CENTER Date: **JAN 05 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. 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, a software consulting company, states that it is a subsidiary of [REDACTED], located in Mexico. The beneficiary was granted one year in L-1B status in order to work in the petitioner's new United States office as a software architect and project leader, and the petitioner now seeks to extend his status for two additional 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 asserts that the beneficiary possesses an advanced knowledge of the petitioner's processes and procedures and is required to apply such knowledge in the proffered position. Counsel contends that the denial of the petition is based on a misapplication of the law and is contrary to the relevant statute and regulations defining "specialized knowledge." Counsel submits a brief in support of the appeal.

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

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

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

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

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

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

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

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

The 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 26, 2008. In a letter dated August 21, 2008, the petitioner described its "unique technologies" as follows:

[The petitioner] is recognized for its outstanding quality assurance processes based on enhancements to the Capability Maturity Model® Integration ("CMMI"), an innovative process improvement approach created by Carnegie Mellon University's Software Engineering Institute ("SEI"). . . . The company created its proprietary Quarksoft Software Development Process ("QSSDP") based on CMMI-based project management approach, which features the use of Personal Software Process™ ("PSP") and Team Software Process™ ("TSP"). The PSP and TSP methods were originally developed by SEI and specifically modified and adopted by [the petitioner] for its project management and software development purposes.

The petitioner stated that the beneficiary, in his role as software architect and project leader, "will draw upon his specialized knowledge of [the petitioner's] unique software development protocols, methods and processes to perform software design and implementation, and technical analysis of our products and systems." Specifically, the petitioner described the beneficiary's specialized knowledge and claimed duties as follows:

[The beneficiary] will apply his specialized knowledge of intellectual resources, analytical and problem-solving methods developed by [the petitioner] to provide client consultation and develop technical solutions. Drawing upon his knowledge of QSSDP, PSP and TSP-based software estimation practices in use at [the company], [the beneficiary] will lead application design and implementation efforts. He will manage [the petitioner's] development teams in Mexico for IT projects, ensuring adherence to the company's processes, standards, and policies.

His specific responsibilities will include the following:

- Developing software architecture and defining High Level Design for complex systems and/or services. In doing so, [the beneficiary] will draw upon his expertise in the specialized tools, techniques and methods developed by [the petitioner] for enterprise application development;
- Ensuring that the architectural design fulfills all client requirements while meeting [the petitioner's] technical and quality standards and requirements.
- Communicating technical specifications and architectural solution with customers;
- Ensuring the timely and within budget completion of the projects through effective team management, customer interaction, and use of [the petitioner's] unique software estimation and project management tools;
- Developing project budget estimates in accordance with corporate protocols using specialized analytical tools and methods;
- Scheduling work priority for programmers to meet project deadlines and establish priorities to accommodate customer needs;
- Ensuring that all the processes required by QSSDP are followed by the team.
- Proposing enhancements to the QSSDP process to increase the productivity, quality and revenue of the organization.
- Controlling all the changes requested for the client following control management process to ensure project revenue;
- Making the team management efficient by tracking individual and team needs to get more cohesion that guarantees the success of the project; and
- Developing new business opportunities with the current customers by identifying enhancements and new requirements.

The petitioner stated that the position requires experience with the company's TSP, PSP and QSSDP processes, programming tools, and standards for functional and detailed design specifications. The petitioner indicated that there are no U.S. workers qualified to fill the role "due to the fact that our operations are based on unique methods and protocols developed by [the petitioner] in Mexico."

The petitioner indicated that the beneficiary has gained approximately four years of specialized knowledge experience with the petitioner and its parent company in the positions of software engineer, software architect and project leader, and that through his employment, he has "developed a deep understanding of QSSDP, PSP and TSP," and specialized knowledge of the company's "unique software estimation practices, protocols, and procedures relating to software design, development and enhancements." The petitioner noted that the

beneficiary has a computer engineering degree, holds certifications as a Sun Certified Programmer for the Java 2 Platform 1.4, and has completed an in-depth training course in Linux. Finally, the petitioner stated that he has received company-provided training in CMMI, Spring, Hibernate, Java, and J2EE, and obtained certifications in PSP and TSP.

The director issued a request for additional evidence (RFE) on September 2, 2008. The director instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties in the United States; (2) an explanation regarding any special or advanced duties performed by the beneficiary; (3) a detailed explanation regarding exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge and whether it is used by other employers; (4) an explanation regarding the beneficiary's training or experience in comparison to others employed in the field; (5) a detailed description of a specific project in which the beneficiary has been involved.

In a letter dated October 1, 2008, the petitioner emphasized that the company utilizes a suite of unique and proprietary methods, QSSDP, to provide project estimation for clients, develop defect-free software and systems, and to manage development projects. The petitioner stated that its "unique approach enables its software teams to work more productive at a higher quality level," because it enables better design and implementation practices. The petitioner noted that QSSDP is based on modifications made to the trademarked PSP, TSP and CMMI methodologies developed by SEI. The petitioner emphasized that "[the company's] uniqueness is marked by its reliance on QSSDP in every phase of its software/system development work, offered in conjunction with its 'Near-Shore' consulting advantages, wherein the programming work is conducted in Mexico."

The petitioner indicated the "QSSDP methodologies and technologies, developed and continually refined at [the petitioner's] main office in Mexico City, are closely guarded industrial secrets." The petitioner further stated:

The services offered by [the petitioning company] are unique within the industry. We note that CMMI is an approach most commonly used in complex high-end manufacturing contexts, such as defense, aerospace and automobiles. While there are a few major software/system development consultants who are CMMI certified and utilize the CMMI/PSP/TSP approach (such as Tata Infosys of India), our work is based on QSSDP. . . . QSSDP is a proprietary and comprehensive approach based on [the petitioner's] own adaptation of the CMMI/TSP/PSP approaches and specifically engineering to match our particular line of business, which makes QSSDP unique and proprietary. Also, to our knowledge there are no similar businesses that offer "Near-Shore" development services as we do.

QSSDP is so unique and specialized, that all of [the petitioner's] employees engaged in development duties are required to undergo an extensive training program. [The petitioner] invests a significant amount of resources to provide this training, which lasts 6 weeks at a cost of \$9,000 to \$11,000 per person for its new employees.

The petitioner further stated that the duties the beneficiary will perform in the United States are unique within the industry, and that he is the only member of the U.S. entity's two-person staff with QSSDP expertise. The petitioner emphasized that the beneficiary's position requires "formal training in CMMI/TSP/PSP, an in-depth instruction in how these approaches have been modified to form QSSDP, and several years of hands-on professional experience in system/software development at [the foreign entity] to attain the level of specialized expertise required." The petitioner indicated that U.S. workers could not be trained "without significant economic inconvenience." Rather, the petitioner stated that, if it is not feasible to continue employing the beneficiary in L-1 status it will "explore the possibility of transferring other, similarly qualified personnel from [the foreign entity]."

The petitioner also outlined the beneficiary's training and experience, stating that his "expertise in QSSDP is not knowledge possessed by other practitioners in the field," and not possessed by other employees of the U.S. company.

In support of the RFE response, the petitioner submitted: information regarding SEI's CMMI process improvement approach from the SEI web site; client success stories obtained from the petitioner's web site; a proposal for a client project; a document describing the petitioner's TSP and PSP methodologies; and copies of project documentation, including invoices and internal correspondence to which the beneficiary was a party.

The director denied the petition on October 20, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in a capacity requiring specialized knowledge. In denying the petition, the director noted that the petitioner conceded that other software consulting companies utilize the Software Engineering Institute's CMMI, TSP and PSP processes, and failed to explain how its adaptations to these processes set the petitioning company apart from its competitors. The director found that the beneficiary's knowledge is similar to that of many software engineering consultants working in the field and that such knowledge, while likely highly technical, is not specialized within the petitioner's industry.

The director further found that the petitioner had failed to establish that the beneficiary's knowledge is specialized in comparison to the petitioner's own employees, emphasizing that the petitioner indicated that all of its software development employees must undergo a six-week training program. The director acknowledged the petitioner's argument that the beneficiary is the only employee based in the United States with the claimed specialized knowledge, but noted that the petitioner also indicated that it could transfer another employee from Mexico to replace him if necessary. The director observed that "the purpose of the intracompany transferee category is to allow multinational companies to transfer key personnel, not for companies to avoid the economic inconvenience of hiring skilled personnel in the United States or avoid using other categories for skilled workers." The director concluded that the beneficiary had not been shown to possess knowledge beyond that possessed by a skilled worker.

On appeal, counsel for the petitioner objects to the director's finding that the petitioner failed to explain how its software development and project management methodologies differ from those utilized by other companies in the industry. Counsel states:

In fact, the petitioner has explained the uniqueness in its application of these methodologies in the response to the Service's Request for Evidence stating, "[The petitioner] adapted the CMMI, PSP and TSP methodologies as QSSDP to support their software and system development activities."

[The petitioner] also explains that the unique and highly proprietary QSSDP methodology provides project management techniques and quality assurance processes to give clients reliable and timely delivery of software solutions that enhance their operations. QSSDP methodology is different from CMMI/PSP/TSP methodologies in that it takes into account all aspects of software/system development processes and governs not only the company's internal software/system development and project management process, but in the company's understanding of client operations and requirements as well. The QSSDP approach involves highly scientific methods to determine the number of lines of codes required to complete the project, and utilizes a proprietary estimation model (based on [the petitioner's] historical project database) to produce detailed project estimates. While CMMI may be used independently of TSP and PSP, [the petitioner] has determined through rigorous analysis and testing that the combination of CMMI, TSP and PSP as QSSDP provides optimal framework to support its consulting activities for the company management and project members.

Counsel further emphasizes that the petitioner explained that its service differs from its competitors in that it offers QSSDP in conjunction with near-shore consulting advantages. Counsel states that "while few major software and systems development consultants are CMMI-certified and utilize the CMMI/PSP/TSP approach, this knowledge and type of work is different than the petitioner's QSSDP-based approach," and that, as such, "[the beneficiary's] knowledge of QSSDP methodologies is not commonly known by others in the field, even including those who may possess knowledge in CMMI/PSP/TSP."

Counsel further objects to the director's conclusion that since all of the petitioner's development employees complete the company's six-week training program, the beneficiary's knowledge cannot be distinguished from that possessed by the petitioner's similarly-employed workers. Counsel emphasizes that the petitioner need not establish that the beneficiary is the only person who may possess the claimed specialized knowledge. Counsel asserts that "[the petitioner's] employees specifically involved in the development of QSSDP who have received the intensive training, including the beneficiary, may all possess knowledge that is beyond the average in the given field of software architecture."

Nevertheless, counsel asserts that the beneficiary's role as a software architect and team leader is one in which he is employed primarily to carry out a key processes or function which is essential to the firm's operation, as contemplated in *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982). Counsel emphasizes that the beneficiary is charged with overseeing relations with U.S. clients, including overall project framework and requirements, in-person client consultations and coordination of programming and testing activities, as well as high level design for complex systems.

Counsel concludes his argument as follows:

[The beneficiary] is directly involved in developing the U.S. business, designing software architecture with the proprietary QSSDP methodology and communicating technical specifications with customers. Furthermore, the specialized knowledge involved is unique and not commonly known by others in the industry because [the petitioner] has adapted the more common CMMI/PSP/TSP approach into its proprietary QSSDP methodology.

The Service has misapplied the definition of specialized knowledge to impose on the beneficiary a more burdensome obligation, where none of the petitioner's other employees may possess the same specialized knowledge. The petitioner's proof of the unique and advanced nature of the knowledge in QSSDP is also overlooked when the Service broadly concludes that the beneficiary's knowledge is "essentially similar" to the knowledge of many other software consultants. QSSDP is not the same as similar technology in the industry and therefore, [the beneficiary's] advanced knowledge of [the petitioner's] processes and procedures is specialized when compared to others in his field.

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

Standard for Specialized Knowledge

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

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

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

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

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.

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(1)(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.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. While the petitioner has provided a detailed description of the beneficiary's duties, such duties are typical of a software architect or engineer performing project-related work for a software consulting company. According to the evidence submitted, the petitioning company provides enterprise application development services to the finance, insurance, banking, retail, government, health care, manufacturing and mobile communications industries, and its technological capabilities include .NET, J2EE, Ajax/Web 2.0, SAP, C++, C#, LAMP, Oracle, SQL Server, Struts, XML and other common technologies. Therefore, it is evident that the petitioner's domain expertise and technological capabilities are widely available in the software consulting industry. The beneficiary's exact area of technical expertise has not been described in detail, although the petitioner mentioned that he is a Sun Certified Programmer for the Java 2 Platform 1.4 and has received in-depth training in Java, J2EE, Spring and Hibernate. Counsel and the petitioner assert, however, that the beneficiary possesses specialized knowledge not based on his software engineering or technical skills, but based on his knowledge of and experience with the petitioner's software engineering and development methods and standards, including QSSDP, TSP, PSP and CMMI.

Therefore, the first question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies alone constitutes specialized knowledge. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "special" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification.

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.

In a subsequent decision, the INS looked to the legislative history of the 1970 Act and concluded that a "broad definition which would include skilled workers and technicians was not discussed, thus the limited legislative history available therefore indicates that an expansive reading of the 'specialized knowledge' provision is not warranted." *Matter of Penner*, 18 I&N Dec. at 51. The decision continued:

[I]n view of the House Report, it cannot be concluded that all employees with any level of specialized knowledge or performing highly technical duties are eligible for classification as intra-company transferees. Such a conclusion would permit extremely large numbers of persons to qualify for the "L-1" visa. The House Report indicates that the employee must be a "key" person and "the numbers will not be large."

Id. at 53.

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 proprietary specialized knowledge in this matter is "QSSDP," which is described as "a suite of unique and proprietary methods to: provide project estimation for clients; develop defect-free software and systems; and manage development projects." While the petitioner relies on its development of QSSDP as the cornerstone of its claim that the beneficiary possesses specialized knowledge, the record contains minimal evidence to document or otherwise describe this methodology. For example, the petitioner submitted a 13-page document titled "Our Methodology." The document indicates that the petitioner's methodology includes the Personal Software Process (PSP) and the Team Software Process (TSP), and notes that these terms are registered trademarks of Carnegie Mellon University. Notably, there is no mention in any of the petitioner's documentation of a process known as "QSSDP." The petitioner also submitted an article published in the March 2004 issue of *Crosstalk* magazine, which discusses the petitioner's implementation of the SEI's Capability Maturity Model with the PSP and the TSP. The petitioner stated that the company "adapted the CMMI, PSP and TSP methodologies as QSSDP to support their software and system development activities." As noted by the director, the petitioner has neither described nor documented what adaptations were made to the SEI CMMI, PSP or TSP methodologies or what sets QSSDP apart from other companies' methodologies that rely on the same combination of SEI standards.

The petitioner stated in response to the RFE that "the combination of PSP, TSP and CMMI approaches in the software/system context has benefited [the company] immensely." The petitioner further acknowledged that there are major software/system development consultants that use the CMMI/PSP/TSP approach, but noted

that the petitioner uses the "unique and comprehensive" QSSDP approach which is "specifically engineered to match our particular line of business." Since the petitioner's line of business is software/systems development, it remains unclear how its approach differs from its competitors. The petitioner has not explained exactly what QSSDP entails, beyond combining these SEI processes. Referring to the approach as "unique," "proprietary," and "comprehensive," without more, is not sufficient to acknowledge that any level of familiarity with QSSDP constitutes specialized knowledge.

All IT consulting firms develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. It is also industry standard practice for such companies to seek SEI assessment of their processes and methodologies. CMMI, TSP and PSP are not particular to the petitioning organization. The fact that the petitioner combined these methodologies, modified them in some unidentified way to meet the particular needs of the company, and named the resulting process "QSSDP" is not sufficient to warrant a finding that the petitioner's processes for software development and project management differ significantly from those developed by other companies following SEI models. The petitioner's claim that its operations are distinguished by its ability to offer "Near-Shore" as opposed to offshore project capabilities is not relevant to a determination as to whether the beneficiary possesses specialized knowledge.

Furthermore, while the petitioner emphasizes that its processes and methodologies are highly effective, the petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other IT companies who have also adopted and followed the SEI's CMMI, TSP and PSP approaches to software development. The petitioner indicates that all of its development employees receive six weeks of training in QSSDP immediately upon hiring, but the petitioner has not documented or described exactly what this training entails, and therefore it cannot be concluded that the training process is 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. 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)).

In addition, the claimed six-week period of training in QSSDP is not particularly lengthy, and the AAO cannot affirmatively determine that this amount of training in company procedures would be unusual or uncommon within the industry. The AAO notes that the petitioner, in its initial letter, indicated that the beneficiary's company provided training included CMMI, Spring, Hibernate, Java, J2EE and certifications in PSP and TSP, none of which are specific to the petitioning organization. In response to the RFE, the petitioner added that the beneficiary's training included QSSDP. According to information in the petitioner's sample customer proposal, all of its newly hired engineers are "given a six week course on sound software engineering practices, such as the Personal Software Process (PSP) and Team Software Processes (TSP) family of processes." Again, it is notable that the petitioner does not mention QSSDP in its own company materials.

Overall, the minimal evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's own processes and methodologies. The petitioner has not articulated

or documented how specialized knowledge is typically gained within the organization, beyond mentioning the six-week introductory training course. Based on the petitioner's representations, its internal processes and tools, while highly effective and valuable to the petitioner, 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 software and systems development, after a brief training period. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

All employees can be said to possess unique skills or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. It is appropriate for USCIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of LeBlanc*, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." However, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company. If all similarly employed workers within the petitioner's organization receive essentially the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the company's processes and procedures gained during his employment with the foreign entity is advanced compared to other similarly employed workers within the organization. Counsel emphasizes on appeal that the beneficiary is employed in the United States "primarily for his ability to carry out a key process or function which is essential to the business firm's operation." Counsel notes that as a software architect and team leader, the beneficiary has responsibility for overseeing relations with U.S. clients that is not possessed by other employees within the company. However, upon review of the project documentation submitted, it is evident that the beneficiary is also involved in performing technical project-related work along with the Mexican staff, and indicates his job title as "software engineer" on company correspondence. There is no persuasive explanation as to why the beneficiary was chosen for the U.S.-based position and the AAO will not assume that it was because he is deemed to have advanced knowledge of the company's processes and procedures. The fact that the beneficiary is the only technical staff member currently located in the United States is not sufficient to establish that he his knowledge is specialized or advanced, as the petitioner has simply opted to operate an office with only

two employees at this time. The petitioner acknowledges that the beneficiary could be replaced with a similarly-qualified worker from Mexico.

All of the foreign entity's technical employees would reasonably have knowledge of the company's methodologies and processes for implementing projects. By this logic, any of them would qualify for L-1B classification if offered a position working in the United States as long as they were working for the foreign entity for over one year. According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself will not equal "special knowledge."² An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills demonstrate that he possesses knowledge that is common among software engineers in the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

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

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

The AAO acknowledges that USCIS previously approved an L-1B nonimmigrant petition filed on behalf of the beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference.

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).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity. As articulated by the director, there is a clear basis to question the prior approval and find it erroneous. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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

ORDER: The appeal is dismissed.