



**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa and certified her decision to the Administrative Appeals Office (AAO). The AAO will affirm the director's decision to deny the petition.

The petitioner filed this nonimmigrant visa petition to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Delaware limited liability company, is a provider of accounting and tax productivity solutions. It states that it is the parent company of the beneficiary's foreign employer, [REDACTED], located in Mumbai, India. The petitioner seeks to employ the beneficiary in the position of tax software support specialist for a period of three years.

The director denied the petition on July 9, 2009 and certified her decision to the AAO. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or will be employed in a position involving specialized knowledge. In accordance with the regulations at 8 C.F.R. § 103.4(a)(2), the director advised the petitioner that it had 30 days in which to submit a brief or other written statement to the AAO for review. As of the date of this decision, the AAO has not received a brief, and the record of proceeding will be considered complete.

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.

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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

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

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

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

The petitioner filed the nonimmigrant petition on January 26, 2009. In a letter dated January 6, 2009, the petitioner stated that it is a leading provider of tax productivity solutions, whose clients are primarily CPA firms in need of tax preparation products and services. The petitioner explained that it organizes and assembles its source documents in a powerful document management system and offers its U.S. accounting firm clients a web-based file cabinet where tax return data is stored on servers located in California. The petitioner noted that its trademarked product, [REDACTED] allows clients to review tax returns more efficiently and accurately, delivers a complete set of standardized work papers for every return and integrates source documents, lead sheets and reconciliation work papers into a single PDF file. The petitioner noted that "this product is not currently available from any of our competitors in this market."

The petitioner indicated that the beneficiary has been employed by its Indian subsidiary in the position of tax software support specialist since November 2007. The petitioner further described her duties and specialized knowledge as follows:

In this specialized position, she has gained extensive and in-depth knowledge of [the petitioner's] proprietary tax and accounting software applications. In addition, she has an advanced level of expertise in our company's proprietary processes and applications and this specialized knowledge is not readily available in the U.S. marketplace.

[The beneficiary] possesses knowledge that is valuable to our competitiveness in the marketplace and is uniquely qualified to contribute to our company. She has enhanced our productivity in our Mumbai office and our position in the marketplace. She has specialized knowledge regarding our company's products, operations and decision-making process.

[The beneficiary] is responsible for coordinating the implementation of new applications and maintaining existing systems. She updates existing systems as necessary due to availability of software upgrades. She troubleshoots problems and ensures that they are solved in a timely manner. She maintains existing and new software applications and identifies, troubleshoots and resolves application and system issues. She ensures compatibility and interoperability of custom and 3<sup>rd</sup> party applications and software systems.

She also resolves customer technical questions and issues relating to applications and gives demonstrations of the product to potential and existing clients. She is involved in designing help manuals for increasing the comprehensibility of the in-house applications. She is responsible for resolving issues relating to our application linked to ProSystem fx and ProSeries. She also communicates with clients over the phone and using GoToMeeting to resolve technical issues and questions.

[The beneficiary] is responsible for assisting the development team in improving and implementing new features and functionality of SurePrep Express. She tests our application's stability with respect to porting and reverse porting into the tax software. She resolves client issues regarding our applications and product (leadsheets).

She assists the tax team in testing the tax software calculations in Excel. She also trains staff in the preparation of U.S. tax returns in ProSystem, Go System, Lacerte, ProSeries and Ultra Tax Software. She drafts training materials and manuals for clients and provides technical support and end-user support for the clients using our programs.

These responsibilities require a full understanding of [the petitioner's] systems, including its architectural design and script language, which are unique and existing only at [the petitioning company]. [The petitioner] utilizes proprietary technology that is not available outside the company, as part of its unique e-support technology.

The petitioner indicated that the beneficiary, in addition to possessing a Bachelor of Commerce degree specialized in accounting and finance, completed an "OCR Training Program," which included topics such as "template design, capture of data using Flexi and Fixed Form Readers and Denodo software training."

The petitioner indicated that it has developed "a unique international platform, SurePrep Express, with a distinct architectural design," which includes an in-house scripting language not found in any related company. SurePrep Express is described as "a tax preparation work flow system that reduces tax preparation time," and allows

accounting firms to double the volume of tax returns they can prepare without increasing staffing. The petitioner stated that it has five patents pending for its proprietary tax preparation software applications, and one approved patent. The petitioner further stated:

Because they have been designed by our company, there are no other workers that know how to use these systems. Only our staff in India have been fully trained in these proprietary systems and are well-versed in the intricate details that make these products successful and allow us a competitive advantage in the industry. No other U.S. workers have used these systems, therefore they would not be able to start working for us and be able to handle tax season which is starting in the next month. We would not be able to train other U.S. workers to use these products and systems in time for them to start working for us for this upcoming tax season. At this time, we can only rely on our professional staff in India to come over and start working immediately – no training would be required. If this can not occur, we will face certain client loss and related revenue loss.

Finally, the petitioner further described the beneficiary's qualifications and the proposed U.S. position:

[The beneficiary] possesses an advanced level of knowledge and understanding of [the petitioner's] uniquely developed services and products, including our Dreamworkpapers™ and SurePrep Express. This is based on her extensive training at our India office. She completed 3 months of training initially (1 month of theory relating to U.S. tax laws, followed by 2 months of training on our SurePrep Express application). After she completed this training, she was assigned to our SurePrep Express ProSystem Fx team. She was involved in Form Definition (FDT) work as well as Optional [sic] Character Recognition Data Mapping (OCRDMT) She has handled close to 100 cases using our in-house, proprietary software. This has given her an in-depth and advanced knowledge of how our systems work. . . .

\* \* \*

Because of her skills in this specialized knowledge position, she would be able to work with our CPA clients regarding continuous compatibility with the ProSystem fx software. She will be able to assist with building a bridge between the two applications in order to exchange data during the peak tax season at our Newport Beach, CA office.

Specifically, [the beneficiary] will be responsible for coordinating the implementation of the new applications and interfacing them with existing systems. She will update existing systems as necessary due to availability of our proprietary software upgrades. She will troubleshoot problems and ensure that they are solved in a timely manner. She will maintain existing and new software applications and resolve application and systems issues. In addition, she will ensure compatibility and interoperability of our custom and 3<sup>rd</sup> party applications and software systems.

[The beneficiary] will be responsible for resolving customer questions and issues relating to our unique application linked to ProSystem fx and ProSeries. She will be responsible for assisting the development team in implementing new features and functionality in the SurePrep Express application for ProSystem fx so as to increase the productivity and client base. She will test our application's stability with respect to porting and reverse porting into the tax software. She will resolve client issues regarding our applications end product (leadsheets) and how it related to Microsoft Excel.

She will also assist the tax team in testing the tax software calculations in Excel. She will train staff in the preparation of U.S. tax returns using our proprietary software.

Her position will involve communicating with CPA firm clients over the phone and in person to resolve their technical issues and questions. She will assist sales staff and Client Service Managers in order to familiarize them with the usability and functionality of the distinctive software applications. She will resolve customer questions and issues relating to the practical use of our applications and ensures customer satisfaction.

The petitioner provided a copy of the beneficiary's resume, in which she indicated that her duties as a tax software support specialist with the foreign entity include:

- Testing our application's stability with respect to porting and reverse porting into the tax software.
- Ensuring compatibility and interoperability of custom and 3<sup>rd</sup> party applications and software systems
- Troubleshooting problem areas
- Implementing new applications and maintaining existing systems.
- Working on OCR related software's preparing templates
- Resolving Customer questions and issues relating to our application linked to ProSystemfx.
- Assisting the development Team in improvising and implementing new features and functionality SurePrep Express application for ProSystemfx so as to increase the productivity and client base.
- Testing various US Tax implications in our application.
- Preparation of US Tax Returns (1040) in Pro System Tax Software.

In a request for additional evidence (RFE ) issued on February 24, 2009, the director instructed the petitioner to submit additional evidence to establish that the beneficiary possesses specialized knowledge, including, *inter alia*, the following: (1) an explanation describing how the duties that the beneficiary performed abroad and those she will perform in the United States are different from those of other workers employed by the petitioner or other U.S. employers; (2) a detailed explanation regarding how the beneficiary gained "extensive and in-depth knowledge" about the petitioner's products during her one year of employment abroad; (3) a detailed explanation

of exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge; (4) evidence to show how the beneficiary obtained such specialized knowledge; (5) evidence relating to the "OCR" training program; (6) an explanation regarding how the beneficiary's training is uncommon, noteworthy or distinguished by some unusual quality; and (7) evidence of the beneficiary's work product or a specific project which is an indication of her specialized knowledge. The director also requested detailed organizational charts for the U.S. and foreign entities, information regarding the number of workers holding similar positions for the petitioner in the United States, and information regarding the number of L-1B visa holders currently working for the petitioner.

The petitioner submitted a detailed letter dated March 2, 2009 in response to the director's request. The petitioner stated:

We would like to stress that the position is a specialized knowledge position and that the Alien actually possesses advanced and special knowledge in our unique processes and our proprietary, patent-pending and therefore by definition, uncommon software applications and processes in general. Her skills and detailed knowledge of the intimate workings of our systems and applications, especially in the OCR ("Optional [*sic*] Character Recognition") division, are well beyond the ordinary in this tax preparation field. They go well beyond merely knowing how to work the applications. Alien has actually been involved in developing and implementing features in our software and she has been involved in new template design. These are not simply "skilled worker" job duties. These skills are not available in the U.S., since all this training and work has been obtained in our India office.

The petitioner stressed that the beneficiary' duties have included working on "template design and modification" using OCR, which is needed every year as new IRS and related documents are used for tax preparation. The petitioner indicated that "this process is so novel and unique a concept that we have a patent pending in this exact area." The petitioner further stated:

To even be able to work on these types of intricate projects, one has to attain such a highly-developed level of skill and expertise, and such a precise knowledge of our processes and applications. This is far beyond ordinary 'skilled' work. Alien has attained this level of expertise and advanced knowledge and remains an integral and key part of the OCR team. There are only 6 other OCR team members in the U.S. at this time and more OCR specialists are now needed. Her knowledge has enhanced our productivity in general and stands out, as no other accountants or tax preparers in the U.S. have this knowledge, expertise and skills.

The petitioner explained that its Tax Software Support Specialists are divided into six departments or teams, including the OCR team, the ProSystem team, the GoSystem team, the Lacerte Team, the Ultra Tax team and the Leadsheet team. The petitioner stated that "in order to be placed into a further sub-division with our company, one has to demonstrate additional expertise and advanced aptitude in that specific area." The petitioner noted that only "limited other employees in the entire company" have the same training and do the same type of "dedicated,

focused and complex optional [*sic*] character recognition work," and that "this shows how unique and uncommon her skills are."

The petitioner submitted the requested organizational chart and employee information with respect to the foreign entity. According to the information provided, the foreign entity employs 216 employees in India, of which 112 hold the position title, "tax software support specialist." The chart shows that 46 of these employees are on the "OCR team."

The petitioner stated that the U.S. company employs 13 employees in its California office and 42 employees in its Phoenix, Arizona office. The petitioner indicated that the beneficiary would be employed at the Phoenix office, which employs 7 tax managers with L-1A visas, 35 tax software support specialists with L-1B visas, and two administrative employees. The petitioner stated that the L-1B employees "work in the OCR, ProSystem, GoSystem, Leadsheet, Lacerte and Ultra tax divisions, according to their particular and specialized knowledge."

The petitioner explained that U.S. tax laws changed effective January 1, 2009, and that the petitioning company is no longer permitted to continue its practice of performing 90 percent of its tax preparation work abroad. The petitioner noted that there are currently no U.S. workers trained in its systems, although it intends to hire and train staff to take over such duties within 12 to 24 months. The petitioner emphasized that "there is a huge learning curve when it comes to learning about the revolutionary PROCESS that our company has introduced into the industry as well as learning to use our proprietary software applications." The petitioner emphasized that its employees in India are currently the only employees who are skilled in the company's applications and "revolutionary processes."

The petitioner further described the beneficiary's claimed specialized knowledge as follows:

Alien possesses an advanced level of knowledge and understanding of [the petitioner's] uniquely developed services and products, including our Dreamworkpapers™ and SurePrep Express. This is based on her extensive training at our India office.

She completed 3 months of training DURING, AND AS PART OF HER EMPLOYMENT with our company initially (1 month of theory relating to U.S. tax laws, followed by 2 months of training on our SurePrep Express application.)

After she completed this training, she was assigned to our Prosystem team and after obtaining skills there, she was transferred to our OCR division.

She has handled over 100 cases using our in-house proprietary software in the OCR division. This has given her an in-depth and advanced knowledge of how our systems work. She will be bringing this wealth of skills and expertise to our company from day one.

She is intimately familiar with both the PROCESS AND OUR PATENT-PENDING SOFTWARE APPLICATIONS as well as the state-of-the-art OCR technology that we use and that gives us a technological and competitive advantage in the market.

In response to the director's request that the petitioner explain exactly what is the equipment, system, product, technique, or service of which the beneficiary has specialized knowledge, the petitioner explained that it provides its customers with "the revolutionary process and unique patent-pending software applications and professional staff to prepare tax returns and other financial documents for their clients." The petitioner emphasized that it has its own platform and in-house scripting language, and is "not merely a company supplying a new tax form program in the market." The petitioner claims that its process "has redefined how tax returns are now prepared."

The petitioner further explained that it is the familiarity with the petitioner's software and process which makes its employees specialized "well beyond the ordinary accountant or tax preparer." The petitioner emphasizes that its multi-system process is paperless, permits lower-level work to be done by data entry staff, has the ability to automate data entry of standard documents (Forms W-2, 1099, etc.) through OCR technology, and frees the tax preparer to perform more complex tasks rather than preparing a tax return from start to finish. The petitioner stated that its processes and software applications are "unique and novel to our company alone" and not known by those who have not trained with the company.

The petitioner also provided further explanation regarding the beneficiary's training and experience, noting that the beneficiary is "sub-specialized in the OCR area, template design and data normalization." The petitioner stated that the beneficiary received six weeks of on-the-job training in this area, and "was given an advanced level of training by a third party." The petitioner stated that the advanced training gave the beneficiary "specialized skills for improving the template designing, as well as for the Normalization process." The petitioner described template designing as "the process of capturing data with the help of third party tool," and indicated that "normalizing is process of Data filtering, Data mining and data processing which is helpful for taking data further to SurePrep application with the help of third party tool (Denodo)."

The petitioner stated that the beneficiary's "special duties and activities" including "data capturing of Organizer Pages and Broker Statements along with the Normalization of the data for Broker statements," with responsibility "to cover all the different image variations appearing of the documents defined." The petitioner noted that brokerage houses modify and redesign their statements each year, and accordingly the beneficiary has to adjust the template as well as the normalization process to ensure recognition of client data.

The petitioner also submitted training summaries for the beneficiary from the foreign entity, which indicated that she received 30 days of training on U.S. tax laws at the basic and advanced levels, and 60 days of training on SurePrep Express applications including ten days of training in each of the following topics: Leadsheet, Form FDT – Form Definition Tool, DMT Data Mapping Tool, DDE Dynamic Data Link, Dropdown, and Form Design. The foreign entity also provided a letter summarizing the beneficiary's training on "Template Design – OCR" from April 7, 2008 until May 16, 2008.

In a decision dated July 9, 2009, the director recommended denial of the petition and certified her decision to the AAO. The director determined that the petitioner "failed to explain how the beneficiary's training is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the alien's field or in comparison to that of others employed by the petitioner in this particular field." The director acknowledged the six weeks of on-the-job training completed by the beneficiary, but found that the training listed "merely covers ordinary duties required for any software support specialist." The director found that the completion of on-the-job training does not automatically equate to acquisition of specialized knowledge. The director noted as an example that "Denodo normalization" refers to a third-party program that is widely utilized by companies using computer information technology in many different industries.

The director further referred to the petitioner's claim that its tax software support specialists are assigned to specific divisions, including OCR, ProSystem, GoSystem RS; Lacerte and Ultra Tax, noting that these are "professional income tax preparation software, trademarked, patented and being used nationwide," and not products that are specific to the petitioning company. The director concluded that the beneficiary's training was not substantially advanced or different from that of other workers within the petitioning organization or in relation to training provided by other companies that provide tax software solutions and services. The director concluded that the beneficiary's duties are essentially those of a skilled worker. The director noted that the fact that the petitioner has 35 other individuals in the United States already qualified to perform the same duties as a result of completing the in-house training "takes such skills out of the 'specialized knowledge' context."

The director also considered whether the petitioner established that the beneficiary was involved in the development of its proprietary and patent-pending technology, noting that the beneficiary joined the foreign entity's operations years after its patent applications were filed. The director found insufficient evidence to establish that the beneficiary actually developed new features or improved existing features of the company's products, or that her knowledge of the products is otherwise advanced or outside the ordinary. Therefore, the director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge.

The director next considered whether the petitioner established that the beneficiary has been or would be employed in a position that requires specialized knowledge. The director concluded that the stated duties such as maintaining templates, error solving, troubleshooting, query solving and others are "simply required skills for any software support specialist." The director found insufficient supporting evidence relating to the beneficiary's past assignments or accomplishments to establish that she has performed duties involving knowledge or expertise beyond what is commonly held in her field.

Upon review, the AAO will affirm the director's decision to deny the petition. The petitioner's assertions are not persuasive in demonstrating that the beneficiary has specialized knowledge or that she has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(I)(1)(ii)(D).

*The Standard for Specialized Knowledge*

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

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

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

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

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

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original

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<sup>1</sup> 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.

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 (3<sup>rd</sup> 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, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

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

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would

support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

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

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and prove that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

### *Analysis*

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. 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 appear to be typical of a software support specialist working in the tax preparation field. The beneficiary maintains and supports the petitioner's existing systems and their compatibility with widely available tax preparation software utilized by the petitioner's clients, assists clients with questions, and prepares tax returns using a third-party software. Counsel and the petitioner assert, however, that the beneficiary possesses specialized knowledge not based on her software or accounting skills, but based on her knowledge of and experience with the petitioner's SurePrep Express application and OCR technology.

Therefore, the first question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary technologies and processes 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 of "SurePrep Express," a tax preparation workflow system that categorizes source tax documents, automates data entry of standard tax documents using Optical Character Recognition technology, allows data entry staff to perform lower-level work, and provides a paperless system. The petitioner indicates that its staff are required to possess specialized knowledge "well-beyond the ordinary accountant or tax preparer" due to the unique nature of the petitioner's process. However, the petitioner has not explained exactly how its process or the overall service it provides differ significantly from that provided by other companies that also prepare U.S. tax returns on an outsourced basis. The petitioner submitted numerous magazine articles discussing the trend among U.S. accounting firms to outsource preparation of individual income tax returns to the growing number of Indian firms specializing in this field. One article profiles the petitioner and three other Indian tax outsourcing vendors, noting:

All four follow a similar process: source documents, including W-2s, 1099s, and K-1s are scanned. The scanned documents and other relevant tax files are uploaded to a data center in the United States, and the outsourcing company can access the documents via a Web browser and organize the documents into a Web-based tax file. From these, Chartered Accountants in India access the documents and prepare the returns using the firm's preferred tax software package. Once the returns are completed, the firm can access and review the returns.<sup>2</sup>

All firms in the petitioner's field appear to develop processes, tools and internal systems for safeguarding, organizing, and accessing client data electronically during the tax preparation process and linking such data to third-party tax preparation programs. The articles highlight features of other companies' software which appear to mirror the features offered in the petitioner's SurePrep Express application. Each firm could likely claim that its systems are "unique" and "proprietary," however, the AAO is not persuaded that the petitioner's processes for tax document organization and tax preparation differ significantly from those developed by its competitors.

The petitioner indicates that all of its tax software support specialists receive 30 days of training in U.S. tax laws and 60 days of training in SurePrep Express Applications immediately upon hiring, but the petitioner has not documented or described exactly what this training entails, and therefore it cannot be concluded that the

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<sup>2</sup> Carly Lombardo, *Outsourcing Tax Prep is In, In, In*, Accounting Technology 26, 27 (May 2003).

training is particularly complex or different compared to those utilized by other companies in the industry. The beneficiary was hired as a tax software support specialist almost immediately after receiving a bachelor's degree in accounting and finance and had no documented background in the software support field. If the knowledge needed to support and maintain the petitioner's software can be imparted to an inexperienced employee in a 60-day period, it is reasonable to question the complexity of the processes carried out by the tax software support specialists. The petitioner refers to the unique architectural design and scripting language utilized in its system, but there is no evidence that a tax software support specialist is required to have deep knowledge of the architecture or programming language on which the system is based, or to make any major modifications to the underlying system. 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)). Furthermore, the claimed two-month period of training in SurePrep Express applications is not particularly lengthy, and the AAO cannot affirmatively determine that this amount of training in company procedures and internal systems would be unusual or uncommon within the industry.

Overall, the evidence submitted suggests that the petitioner's employees are not required to undergo extensive training in the company's own systems and processes, and it is just as important that the tax software support specialists understand U.S. tax laws and commercially available tax preparation software. The petitioner has not articulated or documented how specialized knowledge is typically gained within the organization, beyond mentioning the 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 accounting background and familiarity with commercial tax preparation software programs, after a brief training period. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

All employees can be said to possess unique skill 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 her 14 to 15 months of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. The beneficiary spent more than 4 of these months in training; therefore, even if the AAO could affirmatively determine that the beneficiary possesses specialized knowledge, it would not be established that she completed a full year of qualifying employment abroad in a position involving specialized knowledge. See 8 C.F.R. § 214.2(I)(3)(iv).

The petitioner mentioned that all of its tax software support specialists, after completing the initial training, are placed in one of six software divisions, where they undergo additional training in "highly specialized and technical areas," thus differentiating the employees from one another. However, the AAO notes that the "specializations" are in different commercially available tax software applications, such as Ultra Tax, Lacerte and ProSystem. The petitioner has not established that additional training in such software could be considered specialized knowledge particular to the petitioning company. The beneficiary spent part of her 14 to 15 months with the foreign entity on the ProSystem team and is currently assigned to the 46-member OCR team, where she received six weeks of on-the-job training in template designing ("capturing data with the help of third party tool") for Optical Character Recognition technology and normalizing data using Denodo tools. The petitioner has not established how training in third-party tools for capturing and normalizing data is specific to the petitioning organization. Again, the beneficiary was hired with no background in the software field and was able to learn how to design and modify templates in a relatively short period of time, and the AAO cannot find that the knowledge needed to design templates within the petitioning company rises to the level of specialized knowledge. The petitioner has not differentiated the duties of the OCR team employees from those performed by the other tax software support specialists.

All of the foreign entity's technical software support specialists would reasonably have knowledge of the company's SurePrep Express product and its interaction with at least one commercially available tax preparation software product. 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. As noted above, 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 tax software support specialist is not "specialized knowledge." The petitioner must establish that qualities of the processes, procedures, and technologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

The AAO does not dispute the possibility that the beneficiary is a skilled employee who has been, and would be, an 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, while impressive, demonstrate that she possesses knowledge that is common among software specialists working in the petitioner's industry. 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 companies providing tax preparation outsourcing services. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or specialized than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

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

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

**ORDER:** The director's decision dated July 9, 2009 is affirmed. The petition is denied.