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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



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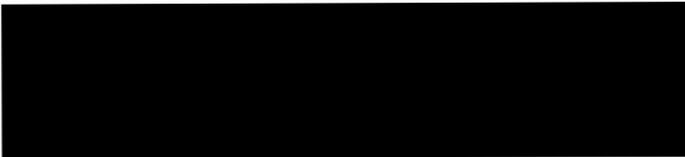
File: EAC 09 001 51029 Office: VERMONT SERVICE CENTER Date: **JAN 21 2010**

IN RE: Petitioner:
 Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Perry Khew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the design and development of IT business solutions. It claims to be a subsidiary of [REDACTED] located in New Delhi, India. The petitioner seeks to employ the beneficiary in the position of Technical Consultant for a period of three years and indicates that the beneficiary will be assigned primarily to the worksite of an unaffiliated employer, [REDACTED]

The director denied the petition concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that he has been and would be employed in a capacity requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the beneficiary is a "key employee" with specialized knowledge of the petitioner's proprietary tools and proprietary Telecommunications Expense Management (TEM) Java framework. Counsel submits a detailed brief and additional evidence in support of the appeal.

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

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

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

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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 primary 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 October 1, 2008. In a letter dated September 17, 2008, the petitioner provided the following background information regarding the petitioner's client and the project on which the beneficiary has been and would be working:

Control Point Solutions (CPS) is the leading provider of Business Process Outsourcing (BPO) for Telecommunications Expense Management (TEM). . . .

[The petitioner] is CPS's key partner for developing and maintaining TEM applications. [The petitioner] is involved in providing the following services to CPS: [TEM] Applications Development, Business Process Support, Support existing Map based TEM applications and IT Infrastructure support. TEM Applications include EDI (Electronic Data Interchange) and Non-EDI development. For over two years, [the petitioner] has been involved in enhancing and porting TEM Applications to new technologies including: Requirements gathering and analysis, Research into design alternatives, Preparing Component design specifications, Writing technical specifications and Coding of Maps, Parser, TEM Framework, etc., Unit and system Testing, Regression and white box testing, Preparing Technical documentation – Mapping, Design, etc., Deployment and Technical Support for the developed TEM components, etc.

The petitioner stated that it requires the transfer of an employee "who has worked on and has in-depth and advanced knowledge of TEM EDI and non EDI applications, software tools, utilities and frameworks for TEMS applications including IRIS Java Framework for adapters and '997' Response Generator." The petitioner indicated that the beneficiary has worked for its Indian parent company since August 1, 2005, and since April 2007, has been working as a "key resource" on the TEM Application Development team. The petitioner described the beneficiary's responsibilities as follows:

- Provided support for existing Map based TEM applications and its critical components like Bill Tamer – BT Agents, all Core File Processing Engine components, 811 EDI File Parses, etc;
- Conducted System & Integration Testing for CPS TEM applications using [the petitioner's] configuration management control tools;
- Provided detailed training to [the petitioner's] team regarding technical details for TEM domain, IRIS Java Framework (built by [the petitioner]) and business rules.
- Conducted detailed requirements analysis and translated into a requirements specifications and technical specifications documents.
- Developed Proof of Concept for EDI maps to evaluate the technical feasibility
- Developed the Proof of Concept for TEM applications Expansion Pack and adapters
- Developed prototypes to demonstrate to the customer, [the petitioner's] understanding of CPS' requirements.
- Developed, coded & tested EDI and non EDI components for TEM Applications
- Analyzed change requests to assess impact on system architecture and submit revised Technical Specifications.
- Developed EDI components for File Processing, included:
 - **File Management – ZeroTouch, Connect: Direct® & Trading Partner**
 - Communicators – BTAgents
 - **811 EDI File Parser**
 - 997 Response Generator
 - **Core File Processing Engine – ECMap, MapTamer, Mercator & Java Maps**
 - Java Framework
 - File Transformation & Loader
- Developed Non-EDI components for File Processing included:
 - File Management
 - Communicators
 - 997 Response Generator
 - **Core File Processing Engine – ECMap, MapTamer, Mercator & Java Maps**
 - Java Framework
 - File Transformation & Loader

The petitioner summarized the beneficiary's knowledge as follows:

Beneficiary has advanced level domain knowledge about TEMS applications and the technical development and implementation of expansion packs for TEMS applications. He has in depth knowledge about Control Point Solutions Bill Manager and Bill Tamer platform

architecture. He was the Tech Lead for development of some critical EDI and non-EDI components and most of the Readers for TEMS applications. . . . He has advanced level knowledge in development of different components and applications (Web, windows, web services and applications using core Java) for TEMS platform. He has advanced level understanding in 811 EDI File Parser specification required for implementing the latest library in the platform components and advanced level knowledge in implementation of [the petitioner's] software tools, utilities and frameworks for TEMS applications including IRIS Java Framework for adapters and '997' Response Generator. These [company] tools are being used in the technical development and implementation of Telecom Expense Adapters for CPS TEMS applications.

Beneficiary has thorough understanding of the technical framework of the entire TEM applications including its various expansion packs and adapters, as he has been involved in its analysis, design, and development at various stages. As a result of his work he has acquired unique and specialized knowledge of TEMS applications specifications and architecture, domain knowledge about TEMS applications and [company] software tools, utilities and frameworks for TEMS applications. . . . His unique and specialized knowledge is essential to implement the next phases of this project onsite.

The petitioner further stated that the beneficiary, as a result of his involvement in the TEMS project, "holds knowledge that in [sic] not commonly held throughout [the petitioner's] organization and distinguishes him from those individuals who may have elementary or basic knowledge of these applications." The petitioner indicated that the knowledge he possesses is "not easily transferable to other IT professionals," and that the work cannot be performed by individuals who do not have "the advanced and in-depth knowledge of CPS TEMS applications, its architecture, and [the petitioner's] software tools, utilities, and frameworks for TEMS applications including IRIS Java Framework for adapters and '997' Response Generator being implemented within the TEMS applications."

Finally, the petitioner stated that the beneficiary's proposed duties in the United States will include the following:

- Gather requirements for new reader architecture required to add additional functionality and features to the next release of CPS TEM platform.
- Build proof of concepts and Prototypes to evaluate new functionality to CPS TEM platform as well as for trade show demos and customer demonstrations.
- Prepare the system test plans in collaboration with the CPS team, develop system test cases, run the system test cases for CPS TEM platform.
- Conduct Integration & Acceptance Testing: in collaboration with CPS team
- Provide support to the QA group at CPS rectifying all defects logged. Provide onsite Deployment support to the implementation teams in US.
- Implement technology upgrades, i.e., shift CPS TEM applications from Unix to Linux or Windows where IRIS Java applications or components can work without any problem or limitation

- Document technical design specifications as well as diagnostic and evaluation testing.

The petitioner's supporting evidence included a copy of the Outsource Agreement between the petitioner and Control Point Solutions, Inc., executed in August 2006, along with a Statement of Work dated July 5, 2006. The petitioner was contracted to develop new EDI converters, and to support and maintain existing and new EDI converters, for CPS's Expense Management Solutions. According to the project description "the converters are used to automate the processing of billing data provided by the service providers." The petitioner was to "provide resources and manage the transition to off-shore successfully." The Statement of Work indicates that "the primary skills identified for this engagement which involves developing and supporting EDI Adapters are Java and EDI 811." The Statement of Work indicates that the petitioner's employees would also need to become familiar with the client's existing tools and technologies including EMap, MapTamer, Cronicle, Mercator, TPPC and Card Catalog.

Finally, the petitioner provided an organizational chart for the Control Point Solutions project team which lists the beneficiary as one of seven employees assigned to the Adapter Development Team. The chart depicts a total of 17 employees reporting to a project manager.

The director issued a request for additional evidence on October 6, 2008, in which he advised the petitioner that the initial evidence did not establish that the beneficiary possesses specialized knowledge specific to the petitioning organization or that he would be employed in a position that requires such knowledge. The director instructed the petitioner to submit, *inter alia*, the following evidence: (1) a letter from the human resources department detailing the manner in which the beneficiary gained his specialized knowledge, supported by documentation of any training the beneficiary received since joining the foreign entity; (2) a detailed description of the actions and duties the beneficiary will perform on a daily basis, including a list of duties which require specialized knowledge; (3) the processes, procedures, tools or methods the beneficiary will use for each duty; and (4) the amount of time it takes to train an employee to use the specific tools, procedures and methods utilized by the company, and the number of similarly employed workers within the organization who possess such knowledge.

In a response dated November 18, 2008, the petitioner emphasized that the beneficiary's assignment to the client project is "in relation/connection to configuration, customization, implementation and management of [the petitioner's] proprietary TEM tools: Java Framework for Adapters, 997 Response Generator, 824 Adapter. . . for which specialized knowledge specific to [the petitioner] is necessary."

The petitioner explained that the company is "a software specialist in the Telecom Expense Management (TEM) space" with "uncommon knowledge of Telecom Adapters." The petitioner noted that Telecom Adapters "are built specifically to take electronic data contained in complex encoded formats and converting them into formats that are easily understood by software applications used by TEM vendors to provide the services they do." The petitioner emphasized that it has over four years of experience in the field and "has not only built specialized knowledge in this space but also built specific solutions and components that speed up many services and processes for TEM vendors," thus making the petitioning company a "vendor of choice."

The petitioner indicated that its key company-specific components include the Iris Java Framework for adapters, the Iris 997 Response Generator for TEM which is "targeted at sending error messages to telecommunications providers on the Electronic Data Interchange (EDI) format files that the telecom provider sends to the consumer of their services," and the Iris 824 Adapter for TEM, which "consolidates . . . rejections on payments and reports them to the Invoice and Audit departments at their customers' offices to make correction at their ends."

The petitioner indicated that it has provided services to CPS for over two years, during which time it has migrated the client's electronic bill parsing environment to the Iris Java Framework; developed and deployed over 50 new adapters at CPS; and modernized the client's operational environment to newer server hardware and newer database versions.

With respect to the beneficiary's qualifications and specialized knowledge, the petitioner indicated that he was assigned to the CPS project team in April 2007 because he: (1) had experience on Java technologies prior to joining the petitioner; (2) was identified as a key resource and trained to become a specialist in the petitioner's TEM practice; and (3) was assigned to work on a project team for another customer where he could acquire deeper experience as a practitioner in the TEM field.

The petitioner stated that the beneficiary was hired in August 2005 and "received specialized classroom/workshop-based training for 8 weeks followed on with on-the-job training in [the petitioner's] TEM proprietary components for the next 5-6 months." The petitioner indicated that the training modules included Telecom Expense Management Software, TEM software development training, company policies and procedures for developing and delivering TEM applications, and software operational training. The petitioner stated that only six employees have completed this training, while other employees have received training on a "subset of these topics."

The petitioner stated that as a result of the training the beneficiary "is designated as a key employee in [the foreign entity] and is continually assigned to perform specialized tasks." Specifically, the petitioner stated that the beneficiary has been performing as a technical leader/Iris Java Framework Specialist on the CPS project performing the following duties:

- Conducting detailed requirements analysis and translated them into requirements specifications and technical specifications for adapters built using the Iris Java Framework to address Call detail
- Using the Iris Java Framework, developing EDI components for File Processing. . . .
- Using the Iris Java Framework, developing Non-EDI components for File Processing. . . .
- Providing support for the Iris components and existing Map-based TEM applications with its critical components – Bill Tamer – BT Agents, Core File Processing Engine Components, and 811 EDI File Parser.
- Planning and conducting System & Integration Testing for TEM applications.
- Developing Proofs of Concept for EDI maps to evaluate the technical feasibility
- Developing Proofs of Concept for TEM applications Expansion Pack and adapters

- Analyzing change requests to assess impact on system architecture and submit revised Technical Specifications for the Iris Java Framework and the TEM applications
- Upgrading and migrating software from one platform to another.

The petitioner's supporting documentation included a description of the company's TEM practice offerings and an overview of the Iris Java Framework for Adapters.

The petitioner also submitted a "TEMS Training Plan" designed to "ensure that [company] personnel are oriented and trained to perform software development work on Telecom Expense Management Solutions." The training plan indicates that new resources at the foreign entity receive eight weeks (40 days) of training. The petitioner provided a letter from the foreign entity verifying that the beneficiary completed the classroom-based training followed by six months of on-the-job training "required for him to be proficient as a key individual to work on [the petitioner's] telecom expense management (TEM) tools."

In addition, the beneficiary provided a copy of the beneficiary's resume. He indicates that he has worked on the "Telecom Readers Development and Maintenance" project for CPS as a software engineer since April 2007, using Eclipse 6.0, JDK 1.4, ANT, Oracle 8.X and CPS proprietary profiles. The beneficiary's resume indicates that he worked on a similar project for another client from October 2005 until March 2007. The beneficiary had six years of experience as a software consultant, specializing in Java technologies, prior to joining the foreign entity.

The petitioner provided additional documentation specific to the CPS "Reader development and Support" project, including a "Reader Orientation Document," a "Reader Testing Process Document," a test plan for the CPS Reader Migration and Support project; a BillTamer Accrual Module Training manual; a QA Process document; and, a Bill Manager 6.0 User Guide.

The director denied the petition on November 26, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary will be employed in a capacity involving specialized knowledge in the United States. The director acknowledged the voluminous supporting documentation submitted in support of the petition, but found that, based on such evidence, "the beneficiary [possesses] the same qualifications and training that can be found among the vast majority of individuals employed in the field," and within the petitioner's organization.

On appeal, the petitioner submits a letter dated January 20, 2009, in which it objects to the director's findings. The petitioner asserts that "methodologies and expertise used by [the petitioner] are unique and different from those used by competing businesses within the industry," and that the beneficiary is, by virtue of his training and experience, an elevated class of worker within the company and not an average employee.

The petitioner emphasizes that TEM is a "highly specialized area with a limited number of TEM organizations with the capability to offer solutions and services in this space." The petitioner asserts that "less than 0.2% of all jobs advertised and less than 0.1% of all resumes posted on popular job sites have the skills required i.e. TEM, EDI, and 997 to perform these tasks." The petitioner indicates that the types of services provided by telecommunications services providers have exponentially increased with the introduction of new

services, resulting in increasingly complex content in electronic bills which must be processed by TEM service providers in order to deliver the services that they are contractually committed to provide to their clients. The petitioner indicates that its Java-based TEM framework is capable of handling both EDI and non-EDI invoice files, is scalable to support various invoice formats like .TXT, .CSV and .MDB, facilitates rapid adapter development, is platform independent since it is based on Java technologies, and has in-built 811, 824 and 868 Parsing capabilities.

With respect to the beneficiary's qualifications, the petitioner states that, as a result of 41 months of experience of using the petitioner's tools to build TEM solutions for its clients, the beneficiary has a level of knowledge which no other company employee possesses. The petitioner states that, in addition to his project experience, the beneficiary "was instrumental in facilitating [the petitioner] in acquiring two significant awards in the TEM space, namely the Rivermine and Solnet projects." The petitioner explains that, although the petitioner was competing against other larger global software companies, "the depth of knowledge and experience of Beneficiary went a long way to secure these deals." The petitioner objects to the director's determination that the beneficiary's skills are commonly found in the industry, noting that while skills like Java and Oracle are widespread, very few people have skills like EDI and 997.

With respect to the petitioner's training policies, the petitioner explains that it offers entry-, intermediate- and advanced-level training, and that only a handful of selected employees are proposed for advanced training based on their skills, role and responsibility. The petitioner indicates that the beneficiary was chosen for advanced training "as he was hired to be an integral part of our TEM practice" based on his pre-acquired skills in Java/J2EE technology using Struts 1.1 framework and Oracle. The petitioner states that after six months of classroom and on-the-job training, the beneficiary was one of six employees selected for "Advanced Training given by an external trainer." The petitioner indicates that the training was on "Advanced EDI Data Mapping in Telecom Industry." The petitioner also contends that the beneficiary's salary with the foreign entity "suggests he is [a] 'key' employee or an 'elevated class of worker.'" Specifically, the petitioner emphasizes that the beneficiary joined the company at a level much higher than entry-level and has since received nearly a 100 percent salary increase in recognition of his specialized skills and key role in client projects.

In support of the appeal, the petitioner submits additional documentary evidence, including commendation letters and e-mails received by the beneficiary, salary records, and additional information regarding the petitioner's employee training and development programs.

Upon review, 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(l)(1)(ii)(D).

Standard for Specialized Knowledge

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

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

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

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

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

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

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

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.

Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." See H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

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

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person.

An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. In other words, specialized knowledge generally requires more than a short period of experience; otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

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

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

Analysis

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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 do not appear uncommon for a software consultant specialized in Java application development, and require him to use knowledge and technical skills which are widely available in the information technology industry. The petitioner acknowledges that the beneficiary was hired due to his existing skills in Java/J2EE technology using Struts 1.1 framework and Oracle, but claims that it his experience with the petitioner's own Java Framework, TEM solutions, and experience with the CPS project which form the basis of the specialized knowledge.

Therefore, the first question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's 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 stated to a framework, tools and utilities developed by the petitioner for its TEM consulting practice. Specifically, these tools and methodologies are said to include the Iris Java Framework, Iris 997 Generator, and '824 Adapter." According to the evidence submitted, the Iris Java framework "is based on the general Java API" or Application Programming Interface. The petitioner develops adapters within this framework using C, C# and Java. The adapters receive billing data from a variety of sources (telecom carriers and services), convert the data into a set of pre-defined formats and load

data into the client's Expense Management application. The petitioner indicates that its adapters cater to different invoice sources (AT&T, Verizon, MCI, Sprint, etc.), formats (EDI 811, CSV, Excel, Access, SQL), different services (voice data, wireless, phone cards, VPN, etc.) and data output requirements. Essentially, the adapters "take electronic data contained in complex encoded formats and convert[s] them into formats that are easily understood by software applications used by TEM vendors to provide services." While the petitioner has explained the capabilities of its "Java-based TEM framework," it has not established how knowledge and experience with this framework alone would constitute specialized knowledge. The framework itself and the adapters developed within the framework appear to be based on industry-standard technologies and tailored to meet the needs of the TEM domain. The petitioner has noted the relatively small number of companies that cater to the TEM sector, but has failed to differentiate its solutions and technology from those offered by TEM vendors themselves, or by other consulting firms working in this sector. The AAO cannot determine whether the petitioner's framework based on "the general Java API" is anything more than a customized version of an industry standard that could readily be learned by any experienced Java developer.

The petitioner further indicates that its company-specific tools and utilities include the '997 Generator' and '824 Adapter,' which appear to be error and rejection reporting functions incorporated into the overall framework. The petitioner's documentation indicates that the framework includes a mailing component which "takes care of all electronic communications like EDI 997, 810 & 824." Again, the petitioner has not explained the significance of these components or their relevance to the claim that the beneficiary's experience with the petitioner's TEM Java framework constitutes specialized knowledge. It is reasonable to believe that any automated solution for processing EDI format invoices from telecommunications providers would have a mechanism for notifying the providers of EDI non-compliance errors.

The petitioner indicates that new hires who will be assigned to perform software development work on Telecom Expense Management Solutions receive eight weeks of classroom/workshop-based training. The training includes a three-day introduction to Telecom Expense Management, 14 days of training in the Java Framework for Adapters covering 811 parser, 824 parser, 997 generator, and mapping EDI and non-EDI invoices, one day of training in setting up a TEM environment using Eclipse 6.0, 10 days of applying knowledge in testing, programming and live environments, five days of training in understanding and transforming user requests to integrate in adapters, two days of training in test planning and execution, one day of training in release planning, one day of training in software configuration management, and two days of "software operational training." The petitioner indicates that only six employees have completed this training, while others receive training in a "subset" of such topics. However, the AAO cannot find that completion of eight weeks of training is sufficient to bestow "specialized knowledge" not possessed by those who may have completed only part of the training, particularly as the petitioner has not provided an explanation as to why some new hires would be excused from completing the entire program specifically designed for new hires. Furthermore, the organizational chart for the CPS TEM project team alone includes a total of 18 employees. If only six employees in the company have completed the basic 8-week introduction to TEM, this raises questions as to whether employees are regularly assigned to work on client projects with little to no specific training at all in the company's TEM solutions and tools.

The AAO acknowledges the petitioner's statement that the beneficiary completed an additional six months of on-the-job training. The petitioner does not indicate whether such training is the norm for newly hired workers assigned to the TEM practice, nor has it described the nature and scope of the training. 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)). According to the beneficiary's resume, he was assigned as a TEM Developer to develop and support adapters for a client's TEM system in October 2005, two months after joining the foreign entity. The beneficiary lists identical responsibilities for this role and his current role with the CPS project, and it appears that he has been fully performing the duties of the position since he completed the two-month training program for new hires. Furthermore, the record contains an e-mail from the petitioner's client, Avotus Corporation, dated March 27, 2006, in which it requests that the petitioning company "continue to set aside [the beneficiary] as our key contact." Although the petitioner indicates that the beneficiary was in training from August 2005 until April 2006, this evidence further suggests that the beneficiary was fully performing the responsibilities of a TEM consultant without completion of an extensive training period.

Based on a review of the totality of the evidence submitted regarding the petitioner's solutions and its internal training programs, it appears that the company's Java framework, tools and utilities, 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 Java application development and appropriate functional background for the project to which they will be assigned. For this reason, the petitioner has not established that knowledge of its framework and tools alone constitute specialized knowledge. The evidence does not support a conclusion that the petitioner's TEM solutions are particularly complex or different compared to those offered by other companies in the industry, or that it would take a significant amount of time to train an experienced Java consultant who had no prior experience with the petitioner's family of companies. To the contrary, the minimal evidence submitted suggests that the majority of the petitioner's employees are not required to undergo any extensive training in the company's processes, framework and methodologies.

For these reasons, the petitioner has not established that knowledge of its framework, tools and utilities alone constitute specialized knowledge.

The petitioner argues that a secondary component of the beneficiary's purported specialized knowledge is his existing knowledge of the client's TEM platform architecture, including Bill Manager and Bill Tamer software, and his understanding of the client's requirements. The beneficiary's familiarity with the unaffiliated employer's systems and requirements, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that he possesses specialized knowledge. All technical consultants within the petitioning organization would reasonably be familiar with its unique internal processes and methodologies for carrying out client projects in their assigned functional domain. Similarly, most employees would also possess project-specific knowledge relative to one or more clients. However, the fact that the beneficiary possesses very specific experience with a particular onshore-offshore client project does not establish that the beneficiary's knowledge is indeed special or advanced.

The AAO acknowledges the beneficiary's designation as a "technical lead" on the offshore component of the project and the petitioner's evidence that the beneficiary has received significant salary increases as a result of

his performance since joining the foreign entity. However, the AAO cannot attribute the beneficiary's relatively high salary to "specialized knowledge."

All employees can be said to possess uncommon 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." A skill set that can be easily imparted to another similarly educated and generally experienced Java developer 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 beneficiary's rise from new hire to technical lead has not been shown to be due to his comparatively advanced knowledge of the petitioner's solutions and technologies. The petitioner indicates that the beneficiary was identified for his position based on his years of prior experience with Java frameworks and applications development.

The AAO does not dispute that the beneficiary is a skilled and experienced 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. Nor does the evidence establish that the beneficiary's training, work experience, or knowledge of the company's frameworks and tools 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 working in the TEM domain. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

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

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

DISCUSSION: The appeal is dismissed.