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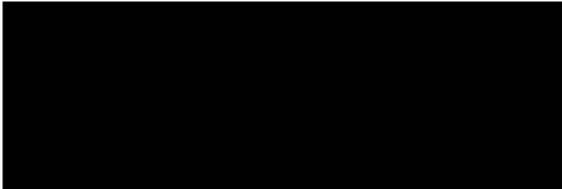
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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File: WAC 08 154 51771 Office: CALIFORNIA SERVICE CENTER Date: **JAN 21 2010**

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

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

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

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant visa petition to employ the beneficiary in the United States as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a manufacturer of industrial automation systems and solutions, states that it is the parent company of the beneficiary's foreign employer, located in Prague, Czech Republic. The petitioner seeks to employ the beneficiary in the position of embedded software engineer for a period of three years.

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 asserts that the petitioner established that the beneficiary possesses the required specialized knowledge for the U.S. position. Counsel submits a brief and additional evidence in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the

same work which the alien performed abroad.

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

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

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

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

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and that he has been and will be employed in a capacity requiring specialized knowledge.

**The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on May 6, 2008.** In a letter dated April 28, 2008, the petitioner indicated that the beneficiary's current employer, the petitioner's Czech subsidiary, houses one of the organization's Advanced Technology Labs "charged with the responsibility of analyzing, researching and developing product and system prototypes for [the petitioner's] operations on a global basis." The petitioner indicated that the beneficiary joined the foreign entity in October 2006 in the position of research engineer, performing the following duties:

[The beneficiary] has been responsible for leading and participating in research and development projects for [the petitioner's] Advanced Technology Division on an international level.

As a Research Engineer, [the beneficiary] is specifically responsible for researching, analyzing, designing, developing, implementing and testing state of the art components and subsystems for [company] products. He is also responsible for conferring and working with other [company] engineers on an international level, including the company's engineers at [the petitioner's] Labs in Cleveland (Mayfield Heights), Ohio and Milwaukee, Wisconsin, in connection with the company's research and development projects.

As a Research Engineer, [the beneficiary] has been responsible for the analysis, design and implementation of the firmware (embedded software) used inside the company's embedded devices, such as [the petitioner's] Logix controllers. As part of his duties, he is responsible for

the specification of embedded software modules and subsystems based upon the company's goals concerning maintainability, extendibility, reliability, testability and efficiency. He is also responsible for updating the documentation to support changes within the system requirements and related modules or subsystems.

In his current capacity, [the beneficiary] participates in or leads the implementation, unit testing, code review of embedded software modules or subsystems. He identifies, reports and documents anomalies found in products or tools using appropriate reporting mechanisms. He also conducts investigations of software anomalies in association with the functional test team, customer support team, or other interested groups as needed. In addition, he is responsible for participating in activities to debug and correct the anomalies.

Over the past year, [the beneficiary] has been engaged in a number of key research and development projects for [the petitioner]. For example, he has been responsible for designing and modifying new Logix controller firmware for the company. He has also been responsible for leading the design and implementation of a security subsystem for the company's embedded devices, including the research and prototype activities. He has also been responsible for designing new architecture for the company's products. In addition, he has been responsible for the re-design of an existing communication subsystem in the company's Logix controller firmware.

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

[The beneficiary] has been involved in critical research and development projects relating to embedded firmware design and development in which he has played a key leading or participating role for [the petitioner]. [The beneficiary] has participated in the overall strategy and definition for advanced technology projects. He has also participated in defining and shaping the products and applications of the future. He has been instrumental in identifying the value of advanced technological developments for incorporation into [the petitioner's] products and systems. Moreover, he has expert knowledge of [the petitioner's] embedded devices.

Specifically, he has designed and implemented the core part of the communication subsystem (Publisher/Subscriber) for the company's Logix controllers. He has worked on the new communication (fragmentation/reassembly) protocol which should be incorporated into this subsystem. By way of example, he is the only person in the company with the overall detailed knowledge of the subsystem and he is also the only person working on a full-time basis on the design of the new protocol and the new architecture for the subsystem.

Since there is [a] strong desire to use [the beneficiary's] new architectural proposal as a basis for the new design of the communication subsystems implemented across various [company] embedded devices, it is necessary to coordinate the effort very closely within the other architectural activities within the company. As such, [the petitioner] would like to transfer [the beneficiary] temporarily to [the] U.S. operations so that he will be able to participate in

intensive discussions and work activities concerning the new design with all relevant [company] architects and developers.

The petitioner indicated that it would like to employ the beneficiary at its Ohio Advanced Technology Lab as an embedded software engineer, performing the following duties:

[The beneficiary] will be responsible for developing and documenting designs for embedded software modules and subsystems based upon product requirements and internal goals concerning maintainability, extendibility, reliability, testability and efficiency. He will be updating the documentation to support changes in requirements and related subsystems or systems. He will also be participating in the analysis and specification of embedded software modules and subsystems.

While in the United States, [the beneficiary] will be assuming a key role by participating in the design of embedded software subsystems and systems that optimize and balance the following goals: run-time performance, memory requirements, simplicity and correctness, development time and effort, reusability, extendibility, reliability, and safety. He will be identifying methods to maximize the application of already existing internal or external software components in order to shorten the product development cycle. He will also review the system and subsystem designs of others for system design implications.

[The beneficiary] will also be participating in the actual implementation of embedded software subsystems or systems. He will conduct code reviews as required. He will be reporting anomalies found in products or tools. He will also investigate software anomalies in association with the functional test team, customer support team, or other interested groups as needed. In turn, he will be debugging and correcting the software anomalies. Finally, he will be responsible for reviewing test requirement documentation as well as product documentation, including user manuals, release notes, and other matters as needed.

The petitioner stated that the position requires an individual "who has played a key role in leading and participating in research and development projects with regard to [the petitioner's] embedded software products and systems."

The petitioner submitted a copy of the beneficiary's resume, in which he indicates that his computer skills include C/C++ (ARM, MS Visual Studio), Object Oriented Programming, ClearCase, Multi-ICE, VxWorks, C#, XML and UML. The beneficiary indicates that his duties with the foreign entity include the following:

- C/C++ firmware development
- project lead and architect
- research as well as regular development

The beneficiary indicates that from June 2000 until October 2006, he worked as a developer and system engineer for [REDACTED], assigned to work as a contractor for the foreign entity. The beneficiary states that his

duties in this capacity included C/C++ firmware and software development, research and regular development.

On May 12, 2008, the director issued a request for additional evidence (RFE) to establish that the beneficiary possesses specialized knowledge. Specifically, the director instructed the petitioner to submit the following: (1) an organizational chart for the foreign entity depicting the beneficiary's position in the company's staffing pattern; (2) the total number of employees working for the foreign entity; (3) a copy of the U.S. company's organizational chart; and (4) the total number of employees working for the U.S. entity at the location where the beneficiary will be employed, including any H-1B employees and their job titles. The director advised that the initial evidence was not sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field.

In response dated May 28, 2008, the petitioner stated that the Czech company's research center employs 13 direct employees and 31 contractors. The petitioner indicates that the beneficiary reports to a senior research engineer and does not supervise subordinate employees. The petitioner indicated that its Mayfield Heights, Ohio location employs approximately 1,150 direct employees of which 12 are H-1B workers and four are L-1B workers. The petitioner stated that the beneficiary is the only person employed within the global organization "who has researched and created several advanced communication protocols for [the petitioner's] proprietary line of Logix controllers." The petitioner indicated that the communication protocols are a prerequisite for a new set of product features to be incorporated into the company's products, and that the beneficiary is "the only person in the global [company] organization with an in-depth knowledge of these protocols."

The petitioner emphasized that its Logix system is a key component to the company's proprietary line of Integrated Architecture, a "core product system" on which the petitioner devotes a significant amount of resources. The petitioner noted that the beneficiary's "novel research and development work is targeted at enhanced functionality for company customers that use the Logix system within the process industry," which the petitioner indicates is a "top strategic priority." The petitioner indicated that the beneficiary's research and development work will be incorporated into a "new communication scheme within the company's Logix system." The petitioner stated that the beneficiary's knowledge is unique and uncommon, and not possessed by the U.S. based engineers.

The petitioner's response to the RFE also included a letter from [REDACTED], director of the petitioner's Czech subsidiary. [REDACTED] states:

This is not a case where the beneficiary . . . has simple knowledge of the systems being used. Nor is this a case where the beneficiary's familiarity of the parent organization, innate talent, or potential to contribute to the organization's growth serves as the basis for the requested transfer.

Rather, this temporary transfer involves a key Research Engineer, [the beneficiary], who has been responsible for leading advanced research and development projects for [the petitioner] on a global basis and his research work is now going to be incorporated into the next

generation of [the petitioner's] technology, products and systems for worldwide use, thereby keeping [the petitioner] on the leading edge of industrial automation systems technology.

Specifically, [the beneficiary] is the only author of several communication protocols for [the petitioner's] highly-specialized industrial controllers. These state-of-the-art communication protocols are a prerequisite for the set of new product features which are going to be incorporated into the company's products and which will bring critical competitive advantages to the company. The design of these protocols is the result of the unique research conducted at company's operations in Prague during the last several years.

██████████ reiterates that the beneficiary is the "only person in the global [company] organization with in-depth knowledge of these protocols," and states that the intended knowledge transfer cannot take place without the beneficiary's temporary presence in the United States. ██████████ further states:

In addition, [the beneficiary] has unique experience with and knowledge of the diagnostics, specifically in the software processing of the diagnostic information, and the related standards. He has been continually working in this area for the last several years. Since the next phase of the product enhancement by diagnostic capabilities is going to be carried out at [the petitioner's Ohio operations], [the beneficiary's] expertise is required and his presence at the facility will enable the company to leverage the unique know-how he possesses to the fullest extent . . . .

Finally, [the beneficiary] was a key participant in the research conducted in the industrial security aspect of the products. Part of this research was conducted by one of the company's research partners in the United States. While working in this area, [the beneficiary] was selected to be the person at [the petitioner] to whom the results of several years of research work would be transferred.

In addition, the petitioner submitted a letter from ██████████ Logix Embedded Software Engineering Manager. ██████████ explains that the beneficiary "has served as a lead engineer in one of [the petitioner's] recent research and development projects concerning the development of a new product feature targeted at enhanced functionality for company customers operating within the process industries." ██████████ further states:

[The beneficiary's] research and development work on this new product feature included a key new firmware object in the company's Logix controller system. The company's Logix system is part of [the petitioner's] Integrated Architecture which is an industrial automation infrastructure that provides scaleable solutions for the full range of automation disciplines. . . . Unlike traditional architectures, Integrated Architecture reduces total cost of ownership by using a single control platform for the entire range of factory automation applications whether they are large or small. . . .

[The petitioner's] Logix system is not only a key component to the company's Integrated Architecture, it is one of the areas to which the company devotes a considerable amount of

resources, including research and development, because it is a core product system and significant product business for the company on a worldwide basis. . . .

\* \* \*

The new firmware object that was the subject of [the beneficiary's] research and development work is going to be used in a new communication scheme between this object and other parts of the Logix system, such as the controller or other devices, that are designed and manufactured by [the petitioner]. . . .

These research and development projects are critical to future developments aimed at that process industries marketplace. [The beneficiary] has unique and uncommon knowledge of that system. None of our other engineers possess this knowledge, especially our local engineers in the United States, because he was one of the lead engineers on the team doing that research and development work at the company's research center in Prague.

Since we are currently either working on, or beginning, several efforts aimed at enhancing and making more maintainable, the software that [the beneficiary] originally developed, it is important for him to continue to bring his specialized knowledge and expertise concerning that system to the engineering teams involved. As these features are becoming more used, and expect to be more exploited within the product, it is important for him to work very closely with our local engineering teams in the United States that do the majority of the product development work in the Logix system. Without the special knowledge that [the beneficiary] brings, and the close interaction between the engineers, it would be significantly more difficult to successfully accomplish these efforts.

The petitioner submitted an organizational chart depicting the beneficiary's proposed position. The chart indicates that the beneficiary would be one of 20 engineers reporting to an embedded software manager, who in turn reports to \_\_\_\_\_ the Logix Embedded Engineering Manager. The chart depicts an additional embedded software manager and engineering manager reporting to [REDACTED], and each of these employees also supervises 15-20 engineers. The organizational chart for the foreign entity's research center depicts the beneficiary as one of 14 research engineers, software engineers and senior research engineers who report to a senior research engineer. Additional research engineers report to employees with the job titles "research consultant" and "senior research consultant."

The petitioner's supporting documentation also included information from its company web site regarding Integration Architecture and the Logix Control Platform and a white paper describing the petitioner's Process Industry strategies.

The director denied the petition on June 11, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring specialized knowledge. In denying the petition, the director observed that the petitioner has not demonstrated how the beneficiary's knowledge or expertise is advanced or special compared to other engineers employed by the petitioning company on an international level. The director noted that "there is no substantive evidence

demonstrating that the beneficiary has been responsible for leading advanced research and development projects for [the petitioner] on a global basis." The director further found that "the beneficiary's generally described employment fails to establish that the beneficiary possesses or has used in the performance of his employment, skills that qualify as or [require] specialized knowledge."

On appeal, counsel for the petitioner asserts that, contrary to the director's finding, "the substantive evidence in this case establishes that . . . [the beneficiary] has been responsible for researching, designing and developing several state-of-the-art communication protocols that are going to be incorporated into the next generation of [the petitioner's] proprietary product line of Logix controllers," and that he is "the only engineer" within the petitioner's global organization that possesses specialized knowledge of these protocols. Counsel emphasizes that the beneficiary will be working with the petitioner's U.S.-based engineers on the next generation of Logix products that will incorporate the communication protocols that he developed. Counsel asserts that "only a small percentage of the company's direct employees are engaged in advanced research and development, such as the 13 direct employees of the company's Research Center in the Czech Republic."

The petitioner indicates that the petitioner has listed the beneficiary as an inventor on at least two patent applications recently filed with the U.S. Patent and Trademark Office. Counsel objects to the director's finding that the evidence of record contained "no substantive evidence demonstrating that the beneficiary has been responsible for leading advanced research and development projects." Counsel indicates that the petitioner submitted substantive evidence in the form of the statements of [redacted] and [redacted] and quotes passages from their statements.

Counsel further objects to the director's determination that the beneficiary's employment was "generally described," noting that the petitioner's initial letter of support provided detailed descriptions of the beneficiary's current and proposed job duties. Counsel asserts that the beneficiary's duties "are only reflective of what is truly critical," namely, "the knowledge possessed by the beneficiary." Counsel notes that the beneficiary will not be performing mere "skilled labor," but rather has been and will be conducting "novel state-of-the-art research and development work involving extremely complex systems and technologies that will be incorporated into the next-generation of a core [company] system."

In support of the appeal, the petitioner submits copies of two U.S. Patent Applications and copies of previously submitted documents. One of the patent applications was filed by the U.S. petitioner on September 29, 2006 for "customized industrial alarms," which is described as an "alarm generation system within an industrial automation environment comprises a packaging component that packages contextual data together with an alarm." The beneficiary is listed as one of nine inventors of the product, among seven American and two Czech contributors. The other invention was also filed on September 29, 2006 for "Buffering Alarms" described as "an industrial field device comprises an alarm generator component that creates an alarm relating to the industrial field device and a buffering component that selectively catches the alarm within a data repository." The beneficiary is listed as one among eight inventors.

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).<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 drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification

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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.

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. *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 or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has failed to document any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other research engineers or embedded software engineers employed by the company or in the industry in general. While the petitioner provided a lengthy description of the beneficiary's current and proposed responsibilities, the AAO

concur that the duties were described in general terms and not distinguished in any way from those performed by the 50 or more other embedded software engineers who also report to the Logix Embedded Engineering Manager within the petitioner's Ohio office. The petitioner indicates that only a small percentage of its workers are engaged in research and development engineering work and implies that these employees necessarily have advanced knowledge of the company's products. However, the petitioner is still obligated to describe and document this beneficiary's specific duties and claimed specialized knowledge in order to support its claims. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner indicated that the beneficiary "has designed and implemented the core part of the communication subsystem (Publisher / Subscriber) for the company's Logix controllers," and "worked on the new communication (fragmentation / reassembly) protocol which should be incorporated into the system." The petitioner indicates that the beneficiary is the "only person working on a full-time basis on the design of the new protocol and the new architecture," and that the beneficiary's "architectural proposal" will serve as a basis for a new design of communications subsystems across various embedded devices. The petitioner went on to describe the importance of Logix controllers within the scope of its Integrated Architecture product offering, but provides no additional detail regarding what exactly constitutes the beneficiary's specialized knowledge, such as a detailed description of the specific projects on which he has worked that are relevant to the U.S. assignment. The additional letters submitted by [REDACTED] and [REDACTED] also failed to elaborate in any detail regarding exactly what constitutes the beneficiary's specialized knowledge.

Such explanation is critical, as the petitioner claims that the beneficiary's work over the last year has rendered him the only employee among the petitioner's staff of 20,000 who is readily able to perform the proposed services in the United States. The petitioner has not indicated when the beneficiary was assigned to work on the Logix communication subsystem project that is stated to perform the basis of his specialized knowledge, provided any documentation related to the "new architectural proposal" he is stated to have single-handedly developed, or explained how his role differs from other research engineers assigned to develop embedded systems for the same product. The petitioner has provided little context within which to evaluate the claim that the beneficiary has developed a unique skill set and knowledge base that is not possessed by any other employee in the world.

Although the director clearly emphasized the lack of evidence in the record regarding the beneficiary's advanced knowledge, the only evidence new submitted on appeal is the two patent applications which were filed by the petitioner in September 2006. The beneficiary's appearance on these applications as an inventor is notable, but the petitioner has not provided any explanation as to how the inventions relate to the beneficiary's qualifying employment abroad or his proposed duties in the United States. The patent applications also precede the beneficiary's date of hire by the foreign entity and were filed while the beneficiary was still employed by another company and working as a contractor for the petitioner's foreign subsidiary. As such, any contributions he made to these inventions did not occur during his period of qualifying employment abroad and will not be considered in this proceeding. *See* 8 C.F.R. § 214.2(l)(3)(iii).

The AAO has reviewed the beneficiary's resume but finds that it sheds no additional light on the specific duties he has performed, any significant assignments he has held with the foreign entity, or the claimed

specialized knowledge. He indicates that he is skilled in C/C++, OOP, ClearCase, Multi-ICE, VxWorks, C#, XML and UML and has experience in all stages of regular firmware/software development process, including requirements specifications, design, implementation, unit testing and documentation, as well as six years of experience in C/C++ firmware development in real-time OS environments. These skills appear to be typical of an experienced embedded software engineer. The beneficiary indicates that, since joining the foreign entity in 2006, he has performed "C/C++ firmware development" and "research as well as regular development." He indicates that he has served as a "project lead and architect," but provides no further details regarding his role or responsibilities, and little basis to support a conclusion that his knowledge is more advanced than similarly-employed engineers working for the petitioning company or elsewhere.

The remaining question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary products 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.

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.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by other employees of the petitioning organization. The petitioner highlights the fact that an undefined "small percentage" of its workers are involved in research and development activities, but it does not immediately follow that all such employees should be considered to have specialized knowledge. The fact that the beneficiary and a select group of workers possess a very specific set of skills does not alone establish that the beneficiary's knowledge is indeed special or advanced. All employees can be said to possess uncommon skill sets to some degree. Moreover, the proprietary or unique qualities of the petitioner's process or product do not establish that any knowledge of the product is "specialized." The petitioner has not explained how ongoing engineering development on its Logix controller product is allocated among its research and embedded systems staff. It is reasonable to believe that such engineers are typically assigned to work on discrete systems, subsystems or other components within a product.

In such a scenario, it appears that any research or embedded software engineer employed by the petitioner's group of companies would be deemed to have specialized knowledge, because they would all have narrowly tailored knowledge of product subsystems or components. This interpretation of "specialized knowledge" is untenable as it would essentially allow the petitioner to utilize the L-1B classification for any technical employee who had one year of experience working on a single project. Rather, the petitioner must establish that qualities of the particular process or product require an individual to have knowledge beyond what is common among its workforce, or to establish that the beneficiary has advanced knowledge of the product. This has not been established in this matter. The fact that other workers may not have the same level of experience with a particular product subsystem is not enough to equate to special or advanced knowledge if the gap could be closed by the petitioner by simply revealing the information to a similarly trained or experienced employee who has worked on a similar product or different aspect of the same product.

While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among a small subset of workers, will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce.

The AAO does not doubt that the beneficiary is a valuable employee who is capable of performing the work described, nor does it doubt that the work is important to the petitioner's product development efforts. However, the fact that the petitioner claims that it does not employ an embedded software engineer or

research engineer with the exact same project experience as the beneficiary at its Ohio facility who could readily perform the intended duties does not automatically lead to a conclusion that the instant beneficiary must possess specialized and advanced knowledge. As discussed above, the petitioner provided only a general description of the beneficiary's intended duties that appears to be applicable to all of its embedded software engineers and did not persuasively demonstrate that the position requires the beneficiary's claimed expertise.

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.

**ORDER:** The appeal is dismissed.