**U.S. Department of Homeland Security**
U. S. Citizenship and Immigration Services
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**U.S. Citizenship and Immigration Services**

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File: SRC 04 100 50054 Office: TEXAS SERVICE CENTER Date: JAN 27 2010

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The director subsequently granted the petitioner's motion to reopen and reconsider the matter, and affirmed her decision to deny the petition. 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 Georgia corporation, is engaged in the design, development, support and operation of worldwide online lotteries. It claims to be a wholly-owned subsidiary of [redacted], located in Athens, Greece. The petitioner seeks to employ the beneficiary in the position of software engineer for a period of two years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position requiring specialized knowledge. The director subsequently affirmed this decision on motion.

On appeal, counsel for the petitioner asserts that the director's decision ignores the statutory and regulatory definitions of "specialized knowledge" and is inconsistent with numerous precedent decisions.

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 February 20, 2004. The petitioner indicated that the beneficiary has been employed by its Greek parent company since September 2002.

In a letter dated February 5, 2004, the petitioner stated that the U.S. company "offers lottery organizations a comprehensive and cost-effective turnkey product solution for integrating networks, terminal devices and software in one centrally controlled online communications network." The petitioner explains that it secures business through open bid procurement through a Request for Proposal process issued by each state in the United States. In July 2003, the company was selected to serve as the "new on-line lottery gaming system and related services contractor for the Nebraska Lottery."

The petitioner stated that the beneficiary would perform the following duties in the United States as a software engineer:

> [The beneficiary] will be responsible for the implementation, development and management of the LOTOS™ on-line gaming computer system and full-function terminals. The LOTOS™ on-line gaming computer system and full-function terminals is the proprietary software developed by [the petitioner] specifically for [company] projects. He will analyze software requirements to determine feasibility of design within time and cost constraints, consult with [the petitioner's] hardware engineers and other engineering staff to evaluate interface between hardware and software, and operational and performance requirements of overall system. He

> will formulate and design software systems, develop and direct software system testing procedures, programming, and documentation. Additionally, he will consult with [the petitioner's] customers concerning maintenance of software, particularly users of the Nebraska Lottery project.

The petitioner stated that the beneficiary has been employed as a software engineer with the petitioner's parent company since September 2002. The petitioner stated that he is currently "responsible for implementing, developing and managing the LOTOS™ on-line gaming computer system and full-function terminals." The petitioner indicated that the beneficiary holds a diploma in electrical and computer engineering and has three years of experience in computer programming, analysis and network administration. The petitioner stated that the beneficiary has "extensive experience in the development and implementation of computer software and will be able to provide the specialized computer software design expertise" that the U.S. office requires.

The petitioner submitted a copy of the beneficiary's resume in support of the petition. He indicates that he has been employed as a software engineer engaged in the "development and maintenance of the LOTOS (Lottery operating system)" in the foreign entity's technical department since September 2002. The beneficiary states that his technical skills include computer networks, object oriented programming (UML design, Visual studio, .NET, Visual C++, MFC, Win 32 API, Visual Basic, Java, J Script), RDBMS, SQL, ODBC, Windows, Linux, OVMS and Matlab.

The director issued a request for additional evidence (RFE) on March 3, 2004. The director advised the petitioner that it must provide additional evidence to establish that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director advised that the evidence must also establish that the beneficiary's knowledge of the processes and procedures of the petitioning company is apart from the elementary or basic knowledge possessed by others.

The director instructed the petitioner to explain what makes the beneficiary's knowledge different from that possessed by others who possess similar experience in the industry, to discuss the beneficiary's contribution to the petitioner's proprietary systems or products, and to indicate how many other employees have the same knowledge as the beneficiary with respect to the petitioner's products. The director noted that having knowledge of the petitioner's products and services alone is not sufficient to be considered "specialized knowledge," but rather the petitioner must establish that the beneficiary's knowledge is above and beyond that possessed by others in the company and in the industry as a whole. Finally, the director requested that the petitioner explain what type of training and/or processes are involved in preparing an individual for the position offered.

In a response dated May 17, 2004, counsel for the petitioner explained that the petitioner's operating system, LOTOS™, is unique to the petitioning group and "not available, known or accessible to any other lottery company in the industry." Counsel stated that LOTOS™ was initially developed by an affiliate of the foreign entity, [redacted], which is currently owned by the foreign entity. Counsel further stated:

> [The foreign entity] is the sole owner of the LOTOS™ operating system, holding multiple patents on its design and applications, and is the proprietary operating system designed solely

> for use in [the petitioner's] lottery software applications. The integrated lottery systems developed by [the petitioning group] rank among the most advanced and flexible systems available worldwide. The innovative LOTOS™ software application platform, designed and fully developed by the company utilizing state-of-the-art methodologies and tools, constitutes the core element of [the petitioner's] lottery systems.
>
> To protect the confidentiality and proprietary nature of LOTOS™, [the foreign entity] is very strict about who is able to learn and become users of the LOTOS™ system. [The foreign entity] strictly allows only its computer programmers, software and electrical engineers to implement the LOTOS system on [the petitioner's] lottery operations throughout the world. These [company] employees are bound by comprehensive confidentiality agreements with [the foreign entity].

Counsel further stated that "only those individuals identified by [the foreign entity] as sufficiently competent professional computer programming, software or electrical engineers, and who are then subsequently trained by [the foreign entity's] engineering staff, are entrusted with the work of knowing, understanding, implementing, revising, or modifying LOTOS™ operating systems for [the foreign entity] and its subsidiaries." Counsel emphasized that specialized knowledge of the operating system is not readily available in the United States workforce.

With respect to the beneficiary's qualifications and the purpose of his transfer to the United States, counsel stated:

> [The beneficiary] has expertise in the development of software using VAX C language and is familiar with Open VMS clusters, networking and alpha servers. This is all critical to the network interfaces between multiple and complex databases. The VAX C language and Open VMS clusters are used with lottery operations due to its durability and accuracy, however, it is an older technology and it is difficult to find professionals who possess this knowledge. [The beneficiary] is one of only four [company] personnel with sufficient knowledge of the LOTOS™ operating system and expertise in the VAX C and Open VMS clusters computer programming to capably support [the petitioner's] lottery installation and maintain operations in the United States.

Counsel stated that the beneficiary "holds specialized knowledge of the LOTOS™ proprietary operating system and is essential to the successful operation and expansion of [the U.S. company]."

The petitioner's response to the RFE included, among other documents, evidence of the petitioning group's corporate structure; an annual report for the petitioner's parent company; website documentation regarding the LOTOS™ operating system; and a press release dated December 15, 2003 announcing the contract between the petitioner and the Nebraska Lottery.

The director denied the petition on June 1, 2004, 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 beneficiary's duties do not

appear to be significantly different from those of any other software engineers in the petitioner's firm, or from those of software engineers in the petitioner's industry at large. The director acknowledged the petitioner's statements that the position requires an individual with in-depth knowledge of the petitioner's proprietary LOTOS™ operating system, but found that the petitioner failed to establish that understanding of this system is indicative of specialized or advanced knowledge within the company. The director emphasized that "no evidence was submitted to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the field." The director concluded by finding that the petitioner failed to furnish evidence sufficient to establish that the beneficiary's duties involve specialized knowledge or expertise that make him key personnel for the petitioning corporation.

The petitioner subsequently filed a motion to reopen and reconsider the denial of the petition on June 28, 2004. On motion, the petitioner submitted a letter dated June 16, 2004 from [redacted], State Tax Commissioner of the State of Nebraska. [redacted] referenced the contract between the petitioner and the Nebraska Lottery, and stated:

> The integral operating system for the [petitioner's] online gaming system, LOTOS™, is a proprietary software program, designed and wholly-owned by [the foreign entity]. Intrinsic to the terms of Nebraska's contract with [the petitioner], is the ongoing technical support provided by [the foreign entity's] personnel. Comparable technical knowledge and expertise is not available in the U.S. workforce. Consequently, we consider it essential that [the foreign entity's] personnel be readily afforded appropriate visa status to permit travel to and from [the petitioner's] U.S. Lottery contract sites, and, in particular, its Nebraska site.

Counsel asserted that this statement, considered along with evidence previously submitted, supports the petitioner's assertions and serves as ample evidence that the beneficiary's knowledge is uncommon, noteworthy and not generally known by practitioners in the field.

Counsel further stated:

> Both the petitioner and the State of Nebraska, which have vested interests in completing a multi-million dollar lottery project, have clearly stated that the knowledge [the beneficiary] possesses is not common throughout the industry. In fact, such knowledge of the LOTOS™ operating system is not common within the company itself. As set forth previously, [the beneficiary] is one of only four [company] personnel with sufficient knowledge of the LOTOS™ operating system and expertise in the VAX C and Open VMS clusters computer programming to capably support the [petitioner's] lottery installation and maintain operations in the United States.
>
> The Service's own regulations define "specialized knowledge" as "knowledge possessed by an individual of the petitioning organization's product...and its application in international markets." The present petition almost reads like a case hypothetical for the Service's definition of specialized knowledge. The beneficiary, in addition to having attained a professional level degree, has been specifically trained by the petitioner's parent company in

> the use and implementation of a proprietary software. There are no U.S. workers readily available with a similar set of skills. The petitioner submits that the instant case presents a fact pattern that Congress envisioned when it enacted Section 214(c)(2)(B) of the Immigration and Nationality Act.

On August 2, 2004, the director dismissed the petitioner's motion and affirmed the denial of the petition. The director emphasized that the petitioner had failed to submit any documentary evidence to differentiate the beneficiary's knowledge from that of others in the industry, and no evidence to support a finding that the beneficiary, as a software engineer, is considered key personnel within the organization.

On appeal, counsel for the petitioner asserts that the director's decision ignores the statutory and regulatory definitions of specialized knowledge and "numerous precedent decisions." Counsel requests that the AAO review the entirety of the record, including the brief and evidence submitted on motion.

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)).

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[1] Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

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

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *See* H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead,

the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

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

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

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

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

relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

*Analysis*

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(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. The petitioner indicates that, as a software engineer, the beneficiary has been and would be implementing, developing and managing the LOTOS™ online gaming computer system and full-function terminals, including duties related to software requirements analysis, testing, programming, documentation and maintenance of the software. At the time of filing, the petitioner simply stated that the LOTOS™ system is proprietary and that the beneficiary "has extensive experience in the development and implementation of software." The petitioner did not identify with specificity any previous projects on which the beneficiary has worked or any special or advanced duties he has performed, nor did the petitioner offer any information that might distinguish the LOTOS™ system from products offered by other on-line gaming system providers. The duties described might reasonably describe the general duties of any software engineer working in the petitioner's industry.

Furthermore, although the petitioner provided a copy of the beneficiary's resume, the information contained therein sheds no additional light on what constitutes his specialized knowledge. The beneficiary listed a number of computer skills and technical proficiencies, none of which are specific to the petitioning organization. The beneficiary stated that he has been employed by the foreign entity for 18 months, engaged in the "development and maintenance of the LOTOS™ (Lottery operating system)," but that is the extent of the information provided regarding his foreign employment.

Accordingly, the director reasonably requested further evidence to establish that the beneficiary's knowledge is not generally known by practitioners in the field, and an explanation as to what distinguishes the petitioner's products from others that are similar in the industry. The director also requested that the petitioner explain the beneficiary's contribution to creating the LOTOS™ system and identify the number of employees who possess similar knowledge.

Although the petitioner submitted a response to the RFE, the information provided was not detailed and failed to fully respond to the queries posed by the director. The petitioner did not, for example, explain how its product differs from those of its competitors, or explain whether or how the beneficiary contributed to the development of the product. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Instead, the petitioner reiterated that the LOTOS™ system is proprietary to the petitioner's group of companies, and that knowledge of such system is confined to the foreign entity's computer programmers, software and electrical engineers. In an attempt to distinguish the beneficiary from this pool of employees, the petitioner emphasized that the beneficiary has expertise in developing software using VAX C language and is familiar with "Open VMS clusters, networking and alpha servers." Finally, the petitioner stated that the beneficiary is one of only four engineers in the company familiar with these older technologies, and noted that such expertise is required for fulfillment of the Nebraska lottery contract. The petitioner noted that "the VAX C language and Open VMS clusters are used with lottery operations due to its durability and accuracy," and stated that such technologies are "critical to the interfaces within the LOTOS™ system." The petitioner did not explain, however, why such critical knowledge is so scarce among its staff or describe how the beneficiary would be using this knowledge to perform his job duties as a software engineer in the United States. 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)). Moreover, the VAX C language and Open VMS technologies are not specific to the petitioning company and as such, the beneficiary's familiarity with such technologies cannot be considered "specialized knowledge" for the purposes of this visa classification.

Therefore, the first question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary LOTOS system 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 include LOTOS™ which is described on the petitioner's website as "an integrated, distributed information system, designed to support Wagering Games and Lottery Operations." As noted above, although requested by the director, the petitioner has opted not to provide any detailed technical information regarding its LOTOS™ product, nor has it offered any information as to how the product differs from similar products offered by other companies in the lottery and gaming industry. The petitioner indicates that its computer programmers, software and electrical engineers are "trained by [the foreign entity's] engineering staff" before they are entrusted with working with the product, and thus, no U.S. workers have the required knowledge of the system. However, the petitioner has not specified the amount or type of training its technical staff members receive in the LOTOS™ system and therefore it cannot be concluded that the technology is particularly complex or different compared to that utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced software engineer who had no prior experience with the petitioner's family of companies. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In addition, the record is devoid of evidence that the beneficiary himself completed any training during his 18 months of employment with the foreign entity. Rather, it appears that the beneficiary's professional engineering degree and three years of software development experience provided him with the knowledge needed to be hired as a software engineer for the foreign entity. The petitioner does not articulate or document how specialized knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge.

The minimal documentary evidence on record suggests that the petitioner's LOTOS™ system, while highly successful and valuable to the petitioner, is based on industry standard technology that can be readily learned by employees who otherwise possess the requisite technical background in software and systems development. For this reason, the petitioner has not established that knowledge of its proprietary product alone constitutes specialized knowledge.

In addition, even assuming *arguendo* that the beneficiary's familiarity with the LOTOS™ system alone could be considered "specialized knowledge," it is unclear how the beneficiary, who has been employed by the foreign entity for 18 months, is considered to have "advanced" knowledge of the petitioner's product. The petitioner does not claim that the beneficiary has served in any key assignments overseas or contributed to the overall development of the product, nor has it otherwise attempted to distinguish his knowledge or experience from any other software engineer within the company. As discussed above, the significance of the beneficiary's knowledge of Open VMS and VAX C technologies, has been inadequately explained and documented, and has not been shown to be knowledge that is specific to the petitioning organization.

All employees can be said to possess some uncommon skills or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have the same level of experience with one aspect of the petitioner's product is not enough to establish the beneficiary as an employee possessing specialized knowledge.

It is appropriate for USCIS to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. at 120 (citing *Matter of Raulin*, 13 I&N Dec. at 618 and *Matter of LeBlanc*, 13 I&N Dec. at 816). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.*

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

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's products, processes and procedures gained during his 18 months of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced relative to VAX C and Open VMS technology is not persuasive. Although the beneficiary may possess a distinct skill set, it must be emphasized that a skill set that can be easily imparted to another similarly educated and generally experienced software engineer is not "specialized knowledge." The petitioner must establish that qualities of the petitioner's 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.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself will not equal "special knowledge."[2] An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, an asset to the petitioner. However, as explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the petitioner's products are substantially different from those developed by other companies in the petitioner's industry. 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.

**ORDER**: The appeal is dismissed.

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