

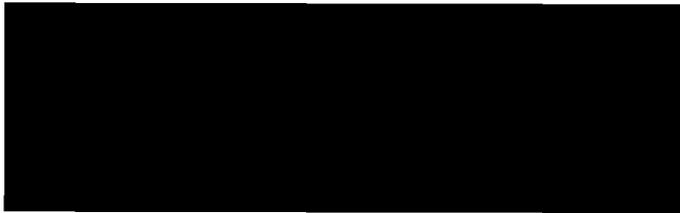
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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File: EAC 09 056 51208 Office: VERMONT SERVICE CENTER Date: **MAY 18 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner, a Virginia corporation, filed this nonimmigrant visa petition seeking to extend the beneficiary's employment 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 operates a restaurant and claims to be a subsidiary of [REDACTED], located in Peru. The petitioner has employed the beneficiary in the position of master chef since March 2006 and seeks to extend his L-1B status until December 31, 2011.¹

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving 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 has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, counsel argues that the beneficiary has a "unique knowledge" of the Petitioner's products, services, and procedures," and "has been the key person for the creation and implementation of all actions" that have made the petitioner's corporate group successful. Counsel contends that the director's decision consisted of a "general and vague argument with no rational link or specific reference to the facts and evidence provided."

Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to the AAO within 30 days of filing the appeal on April 17, 2009. As of this date, the AAO has not received a brief or additional evidence in support of the appeal. Accordingly, the record will be considered complete.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may be authorized in increments of up to two years, and the total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity.

- (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.

The sole issue addressed by the director is whether the petitioner has established that the beneficiary will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (vi).

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

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

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 15, 2008. In a letter dated November 30, 2008, counsel stated that the beneficiary is an "experienced chef," who worked for the petitioner's parent company in Peru for eight years prior to his transfer to the United States. Counsel stated that the beneficiary's "well-known experience and extraordinary ability has played a critical role in the success of the various restaurants, catering businesses, and corporate cafeterias of this international corporation based in Lima, Peru."

The petitioner also submitted an employment letter addressed to the beneficiary, in which it describes his duties as "master chef," as the following:

1. Plan and develop recipes and menus, taking into account such factors as preference of consumers, traditional plates of the Latin American cuisine [sic], new restaurant and

culinary trends, menus offered by competitor in relevant market, seasonal availability of ingredients, likely number of customers, customer's acceptance of new options introduced in menu, offers and representation made in advertisement campaigns, among others.

2. Supervise and coordinate activities of cooks and workers engaged in food preparation.
3. Check the quality of raw and cooked food products, including presentation and serving temperatures to ensure that standards are met[.] As part of this duty, the Master Chef must attend and resolve complaints and special request for customers, adopting appropriate corrective measures.
4. Prepare list of food ingredients for preparation and submission of purchase orders 10 [sic] distributors, estimate the cost of required supplies, and check the quantity and quality of received products.
5. Determine production schedules and staff requirements necessary to ensure timely delivery of services.
6. Demonstrate new cooking techniques and equipment to staff.
7. Draft kitchen-operating manual with detail procedures and prepare proprietary recipes attending consumer's preferences by seasons and market segments.
8. Attend meetings with serving staff to share information regarding ingredients used in preparation, origin, and historic notes about plates in the menu, and recommendations about wines that fit common preferences with each plate.
9. Inspect equipment and work areas to ensure conformance to established standards and prevent safety hazards.
10. Evaluate cook and serving staff in coordination with the restaurant manager and provide intelligence for marketing and advertisement campaigns and measures directed to improve the quality of services.

The petitioner stated on Form I-129 that the beneficiary has worked as a chef since 1985 and as a Master Chef starting in 1994 for "various restaurants." The petitioner noted that the beneficiary "has also taken many courses in the culinary arts from 1997 to 2003." The petitioner submitted copies of various training and educational records evidencing the beneficiary's completion of courses at various Peruvian culinary schools between 1996 and 2005.

The director issued a request for additional evidence (RFE) on January 9, 2009. The director requested, *inter alia*, additional explanation regarding any special or advanced duties the beneficiary performs, and how the beneficiary's duties performed abroad and those he performs in the United States are different from those of other workers employed by the petitioner's group or other U.S. employers in similar types of position. The director further requested that the petitioner explain how the beneficiary's training is different from that completed by others employed by the petitioner or by other persons working in the beneficiary's field.

In a response dated February 20, 2009, counsel for the petitioner stated:

A master chef in general is by nature a specialty knowledge occupation. Most people judge casually and without due consideration the level of preparation, skills, experience and creativeness required to earn the title of master chef. A master chef is not just somebody who is good at and likes cooking. Workers with the experience and training to qualify as Master Chef

are not many. Although we are not representing that [the beneficiary] is a Certified Master Chef in the United States, just as an illustration in the United States there are less than 100 Certified Master Chefs by the American Culinary Federation. . . . [The beneficiary] has the experience, training, knowledge and abilities to earn that classification. He is indeed a Professional Master Chef with the corresponding credential which we list and enclosed.

Counsel stated that the foreign entity seeks to continue "replicating the successful practices of its Peruvian operations in the United States," and that its plans depend on the reputation of the restaurant's service, which is the beneficiary's responsibility. Counsel further states:

Given the plans of [the foreign entity], the very specialized gender [*sic*] of dishes offered and the highly competitive market in which the Petitioner operates, the Petitioner needs a Master Chef with the business and administrative competencies (such as cost calculations, procurement experience, and inventory controls), educational abilities to train apprentices and cooking staff, kitchen management skills, sanitation knowledge, nutrition value knowledge, knowledge of products used which are different from those commonly used by common restaurant (please note this is an Ethnic restaurant), menu planning capabilities, solid knowledge of cooking principles, and most importantly, the creativeness and knowledge of the Latin American Cuisine that distinguish and will continue to distinguish "El Estribo" and future restaurants of the group, as fine dining places.

Counsel further stated that the beneficiary is "an experienced chef with unique knowledge skills and employment background," noting that the beneficiary's "specialized knowledge of traditional and novo Latin American cuisine is extensive and evidenced by his employment record and formal training." The petitioner re-submitted seven training certificates, including evidence that the beneficiary completed two different "professional chef" courses, a 12-hour course in Peruvian cuisine, and courses in pastries, desserts, cutting vegetables, and nutrition for food handlers.

Counsel further stated:

Behind the success of [the foreign entity] in Peru, achieved through years of right decisions and team efforts of its management and staff, the contribution of [the beneficiary] has been key. He was the Master Chef responsible for plate creations, menu design, elaboration of kitchen operation procedures, staffing plans, as well as management policies for the kitchens of all restaurants and cafeterias operated by [the foreign entity].

In this regard, the petitioner submitted an affidavit from [REDACTED] of the foreign entity, who states that the beneficiary has been a key employee of the petitioner's international organization since 1997. [REDACTED] states that "the large scale and success of our operations in Lima is direct result of the valuable contribution of [the beneficiary]." She further states:

The reputation of [the foreign entity] in the restaurant business and the quality of its products, the efficiency of the kitchen operation and the recognition the services have is in great part the result of the praiseworthy work of [the beneficiary], and for that reason he was transferred to the

United States because we are certain his unique experience, knowledge and proved track of success warrants the future success of our business venture in this country.

Counsel further emphasizes that the beneficiary has experience, gained with the foreign entity and other employers, with "the tourist sector and the in-premises or institutional restaurants." Counsel notes that "this type of restaurant is unique because high and strict standards are imposed by the institution or organization where the restaurant operates," and because "[c]oncession agreements at all times impose strict and complex rules about nutrition value, economic value, sanitation, service standards, and kitchen maintenance." Counsel indicates that the beneficiary possesses "unique kitchen management experience" as a result of his work in institutional restaurants that is needed for the petitioner's expansion in the United States, as the petitioner "plans to build a similar niche in the United States by entering the institutional cafeteria with gourmet quality products."

With respect to the beneficiary's claimed specialized knowledge, counsel further stated:

The petitioner's goal to offer a selective array of traditional and modern plates from the tradition and folklore of the Latin-American cuisine depends in its entirety on the services of [the beneficiary]. His special talent as an experienced, well-trained, and recognized chef in the preparation, creation and innovation of menu options without losing distinctiveness is strictly necessary to achieve such goal.

* * *

In brief, the key element to make this business sustainable in the long term and to create the basis for implementing the expansion plans is to have the appropriate support of a professional who has proved to the corporation his special talent and effectiveness. Given the circumstances, the Petition[er] has decided to extend the assignment of [the beneficiary] to the U.S. operations until another employee is adequately trained under [the beneficiary's] mentorship and the first restaurant of a future well-known small chain of restaurants is operating at optimal capacity.

Counsel concludes by stating:

[The beneficiary] is a well-seasoned professional. . . . [H]e worked for [the foreign entity] since 1997 as the Master Chef in charge of tailoring kitchen operational procedures, menus, and service practices for each of the restaurants and cafeterias operated by the company in Lima, Peru. . . .

Acquiring the knowledge that [the beneficiary] has and developing his special ability requires years of preparation, training and experience. In fact, few chefs in their career would get the exposure that [the beneficiary] has had. Although there are culinary institutions in the geographic area of employment, no institution in this area trains in the preparation of dishes served by the petitioner (traditional and novo Latin American dishes), and most importantly, no institution could train to implement the standards, procedures and policies of [the foreign entity] which were precisely created and implemented by [the beneficiary] and today are observed by several

restaurants of the Petitioner in Peru and hopefully will be observed by several restaurant[s] in the United States. . . .

Counsel stated that the petitioner has "disclosed under confidentiality" a sample of the beneficiary's "unique, creative and successful" recipes as evidence of his "special knowledge in the preparation of traditional novo Latin American dishes." The AAO notes that several of the recipes submitted are on "Escuela de Chefs" letterhead, while others were taken from a cookbook titled *Gastrotur Peru*. The petitioner obscured the name of the book with correction fluid on all but one page, apparently in an attempt to represent the recipes as the beneficiary's "unique" representatives. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner also submitted "articles and reports on the specialty occupation of Master Chef," including information from the web page of the World Master Chefs Society and an article regarding the American Culinary Federation's "Certified Master Chef" program. As the petitioner concedes that the beneficiary is not a certified master chef, and he does not appear to possess any comparable qualification, it is unclear how this evidence is relevant.

On March 17, 2009, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge. Specifically, the director acknowledged the detailed description of the beneficiary's duties, and noted that the duties "do not appear to significantly different from those of any Latin American food cook in any similar restaurant business, and therefore do not serve to establish that they warrant the expertise of someone possessing truly specialized knowledge." The director also acknowledged the petitioner's claim that the beneficiary must possess knowledge of the petitioner's kitchen operation procedures and management policies, but found that the petitioner failed to discuss how the petitioner's procedures and policies differ significantly from those used by other restaurants. The director concluded that the petitioner failed to clearly document how the beneficiary's knowledge of the processes and procedures of the organization are substantially different from, or advanced in relation to, any master chef.

On appeal, counsel asserts that "the beneficiary is employed in a specialized knowledge capacity in the United States precisely because of his unique knowledge of the Petitioner's products, services and procedures." Counsel states that the beneficiary "has been the key person for the creation and implementation of all actions that have made [the petitioner's group] a very successful corporate group."

Counsel contends that the director failed to examine the facts and supporting evidence, and issued a decision which has "no rational link or specific reference to the facts and evidence provided."

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

The L-1B specialized knowledge classification requires U.S. Citizenship and Immigration Services (USCIS) to distinguish between those employees who possess specialized knowledge from those who do not possess such

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).²

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

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

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act

² 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.

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.

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) and (iv). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position as a "Master Chef" 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 not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced Latin American-style restaurant chefs employed by the petitioner's corporate group or in the industry at-large. 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized

knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The AAO acknowledges that counsel attempts to distinguish the beneficiary's knowledge from that possessed by other chefs by noting that the beneficiary was "in charge of tailoring kitchen operational procedures, menus and service practices" for each of the foreign entity's restaurants, and responsible for training every kitchen head currently employed by the foreign entity. However, counsel's assertions in this regard are not supported by any documentary evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534. (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The affidavit from Ms. Lopez contains only vague references to the beneficiary's contributions to the foreign entity which are insufficient to establish that he was in fact establishing policies and procedures and training senior staff for up to 15 restaurants, as claimed by counsel. The record contains no detailed description of the position or positions held by the beneficiary while employed by the foreign entity from 1997 through 2005, nor any information regarding which of the foreign entity's "various restaurants, catering businesses and corporate cafeterias" employed him. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, even if the petitioner had established that the beneficiary possesses specialized knowledge of the foreign entity's policies and procedures, the director correctly determined that the petitioner failed to distinguish its internal policies and procedures from those implemented by any restaurant and food service business. Counsel noted that the foreign entity operates institutional cafeterias for government offices, hotels and hospitals in Peru, and that such food service operations are subject to concession agreements with strict and complex rules regarding nutrition value, service standards, and sanitation, requiring the beneficiary to possess "unique kitchen management experience." While the AAO does not doubt that institutional food service providers may operate under different conditions from regular independent commercial restaurants, the petitioner did not explain how the foreign entity's methods, policies and procedures are significantly different from those used by other food service providers working in the same industry, such that experience with the foreign entity would be considered "specialized knowledge." The petitioner repeatedly claims to have implemented "unique" policies, procedures and methods, but has neither documented them nor described them in any detail.

Regardless, the U.S. company operates a single Peruvian restaurant with eight employees. The petitioner has not articulated how its restaurant's management, operational, policy or procedural needs require it to employ a chef with specific experience with the foreign entity's operations, or anything other than typical restaurant kitchen management experience. The petitioner indicates that it intends to venture into opening "in-premise institutional restaurants," in the United States, but these plans have not been documented and do not appear to be imminent. The beneficiary's job description indicates that his responsibilities will continue to be confined to performing head chef duties at the petitioner's one restaurant location.

The petitioner also asserts that the beneficiary possesses specialized knowledge of preparing "traditional and modern plates from the tradition and folklore of the Latin-American cuisine," that he gained through a long

period of training and experience in Peru. The petitioner submits recipes which were ostensibly developed by the beneficiary, but, as noted above, the recipes are evidently derived from published sources. If these are the recipes the beneficiary uses in performing his day-to-day duties, it must be concluded that any experienced chef could readily prepare the dishes.

The record does not establish how, exactly, the beneficiary's knowledge of Latin American cuisine materially differs from knowledge possessed by other workers employed by the petitioning organization's international operations or in the restaurant industry at-large. The record does not establish what qualities of the beneficiary's dishes are of such complexity that the knowledge required to prepare them could not be imparted to a similarly experienced chef in a relatively short period of time. The petitioner's unsubstantiated assertion that the beneficiary's knowledge of traditional and modern Latin American cuisines is unique or uncommon will not establish that this knowledge is truly special or advanced. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)). The petitioner does not articulate with specificity the nature of the claimed specialized knowledge with respect to the company's Latin American cuisine, describe how such knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge. The petitioner does not claim that the beneficiary has received any company-specific training in any aspect of cooking, kitchen management, or operational policies and procedures. Rather, the record shows that the beneficiary completed general culinary arts training offered by external organizations while employed by the foreign entity, and is silent on the issue of whether he completed any internal training during his employment with the foreign entity.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by other experienced Latin American chefs generally throughout the industry or by other employees of the petitioner's international group. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's processes or products, does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced restaurant chef is not "specialized knowledge." Moreover, any proprietary or unique qualities of the petitioner's dishes or operating policies do not establish that any knowledge of these is "special" or "advanced." Rather, the petitioner must establish that qualities of the processes, procedures, or products 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 outside of the petitioning organization may not have very specific, proprietary knowledge regarding the petitioner's dishes and kitchen procedures is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the recipes and procedures to a similarly experienced chef.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced chef. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced Latin American chef, or that he has received special training in the company's methodologies or processes which would separate him from any other worker employed within the petitioner's organization or in the industry at-large. 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 of 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. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge and will not be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

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

Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity. In both the request for evidence and the notice of decision, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous petitions were approved based on the same minimal evidence of the beneficiary's eligibility, the approvals would constitute gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.