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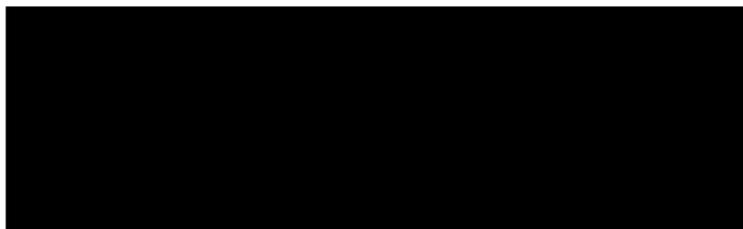


File: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2010

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 \$630. 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, California 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 California corporation, filed this nonimmigrant visa petition to employ the beneficiary in the United States as an intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a subsidiary of [REDACTED] and both entities are engaged in the development, sale and support of digital film technology for the motion picture industry. The petitioner seeks to employ the beneficiary in the position of product specialist for a period of three years.

The director denied the petition, concluding that the petitioner 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 director disregarded the petitioner's evidence, took the petitioner's statements out of context, and applied a highly restrictive standard for specialized knowledge. Counsel contends that the circumstances of this case "fit squarely within what Congress intended when it created the specialized knowledge category." The petitioner submits a letter 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.

I. The Law

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.

II. Discussion

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 December 8, 2009. In a letter dated December 3, 2009, the petitioner described the beneficiary's proposed duties as follows:

As Product Specialist at [the petitioner], [the beneficiary] will be responsible for utilizing his specialized knowledge of [the petitioner's] proprietary Baselight systems, hardware and software to assist in the implementation, installation, support and training of same. A native of Spain, [the beneficiary] will work from his Los Angeles homebase in supporting Spanish speaking clients in the United States, Latin and South America. Specifically, [the beneficiary] will review appropriate hardware systems to match new customer orders, implement and train on new Baselight systems and perform post-sales support for clients. [The beneficiary] will also be responsible for troubleshooting, as well as assisting with the integration of Baselight with third party products and networks.

The petitioner stated that the beneficiary has been employed by its parent company "in the specialized knowledge position of Product Specialist" since April 2008. The petitioner indicated that he "assists [the foreign entity's] European clients in the implementation, testing, training and modifications of their Baselight

systems, performing demonstrations at client sites and through remote access." The petitioner further described the beneficiary's background as follows:

[The beneficiary] earned a Bachelors degree with First Class Honors from the Ravensbourne College of Design and Communication of the University of [REDACTED]. Since then she [sic] has gained more than (2) years of professional and specialized experience in the digital film technologies field with [the petitioning organization] and its Baselight products. Through his career in compositing technologies and color correction for film, [the beneficiary] has amassed industry credits for several international films including Coque (2009), Where (2009), [REDACTED] (2008), and [REDACTED] (2007). His expert knowledge and extensive experience abroad in the film technologies field, with [the petitioner's parent] and its proprietary and unique technologies are critical to his being chosen to serve as Product Specialist at [the petitioning company].

With respect to the petitioning organization and its products, the petitioner stated that it "designs, develops and manufactures integrated solutions for the Digital Intermediary (DI) process and digital post production – producing products and services that fit the real needs of the motion picture profession." The petitioner indicated that its products "are designed with a deep knowledge and understanding of production requirements and are created to fit into and complement existing DI workflows."

The petitioner also provided additional information regarding the DI post-production process and how its products work within that process, as follows:

DI post production is the process of shooting on film, scanning the entire feature to film quality data files, applying the creative process and then recording this data master back to film. This method of intermediate post production process opened up a completely new creative field, and is now employed in virtually all TV programs and over three hundred (300) feature films thus far. DI represents a complete shift that is comparable to the change from linear editing to non-linear systems a decade ago. In watching the development of DI over the past several years, it has had a transformative impact on post-production, revolutionizing the way the entire motion picture business is conducted.

The implementation of a complete digital workflow to create digitally mastered movies is extremely challenging, because the specification is working at the very edge of today's technology. . . . [The petitioner's] DI post production technologies are setting the standards in the field. One such technology is [the petitioner's] digital color grading technology Baselight, which was developed in house by its team of technology experts. The highly advanced Baselight system allows color correction and finishing in motion picture films during the DI post-production process. As a result, Directors of Photography (DPs) and cinematographers can go inside a particular frame in the movie and isolate a particular window or face, changing colors in just that part of the frame. In fact, [the petitioner's] Baselight color-grading technology has been used on major Hollywood motion pictures, including the Academy-award winning director [REDACTED]". . . .

In order for DPs and cinematographers to become involved in the digital post-production process and utilize it more, digital grading must be in real time and interactive. [The petitioner's] Baselight technology uses image processing software running on a standard computer platform, with collaborative processing to achieve the required speed and throughput. In addition to its current Baselight systems developed in the United Kingdom, [the petitioner] is currently creating a new computer system for the entire range of BaseLight products, which will include eight dual-core processors, increasing the speed of all of its systems multiple times. In addition, [the petitioner] is developing a new purpose built computer platform system for the entire range of Baselight grading systems. The implementation of these extremely complex and advanced DI post-production color grading technologies require the services of an individual who already possesses highly specialized and complex knowledge of [the petitioner's] unique and proprietary Baselight technologies.

The petitioner stated that the beneficiary is "ideally suited to participate in the implementation of new Baselight technologies in the United States, as he currently performs these duties in connection with client Baselight systems in the United Kingdom." The petitioner indicated that it considers Baselight to be "the key product to secure [the petitioner's] stature in the Hollywood film industry as a leader in DI post-production technologies."

The petitioner's supporting evidence included several press releases regarding the company's products and services from 2006, and additional product datasheets and product information from the petitioner's public web site.

The director issued a request for additional evidence ("RFE") on December 21, 2009. The director requested, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties abroad, including timelines for training and experience, as well as a more detailed description of the proposed position in the United States; (2) information regarding how the beneficiary's training, education and employment qualify him for the intended position in the United States; (3) a more detailed explanation of exactly what is the equipment, system, product, technique, research or service of which the beneficiary has specialized knowledge, along with an explanation and documentation showing the skills the beneficiary possesses with respect to the petitioner's products; (4) an explanation as to how the duties the beneficiary performed abroad and those he will perform in the United States differ from those performed by others employed by the petitioner or by other employers in similar positions; (5) documentary evidence of the beneficiary's advanced or specialized knowledge or duties; (6) evidence of specialized or advanced training that the beneficiary has received and evidence of any training that the beneficiary will provide to other workers in the United States; and (7) an explanation as to how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field. Finally, the director requested organizational charts for the U.S. and foreign entities, information regarding the number of workers each company employs, and information regarding the number of foreign workers the petitioner employs.

The petitioner's response to the RFE included a letter dated January 11, 2010 from [REDACTED], the foreign entity's director. [REDACTED] stated that the beneficiary has been employed by the foreign entity

since February 2008 as a product specialist. [REDACTED] letter included the following description of the beneficiary's duties:

- (1) Product Training (50%)
 - Creating Baselight systems training implementation plans;
 - Conducting training sessions for new and existing clients timelines and schedules;
 - Identifying client-specific challenges and training issues;
 - Incorporating product updates into training materials; and
 - Following up with client questions and issues presented in trainings.
- (2) Client installation management (20%)
 - Understanding client expectations, in order to meet their needs;
 - Review of existing client technical capabilities, systems and user needs;
 - Coordinating with the onsite installation team to address clients' needs on resourcing and execution of the projects; and
 - Performing product installation followup.
- (3) Product support (30%)
 - Provide production support for our unique Baselight film technology products;
 - Reviewing client needs to assure compatibility with existing systems;
 - Creating ongoing client relationship to assist with future sales;
 - Resolution and escalation of client problem areas; and
 - Execution of backup and contingency plans when needed.

[REDACTED] further described the beneficiary's claimed specialized knowledge as follows:

We operate in a unique niche and target our products to a very specific industry. In performing the duties stated above, the beneficiary developed a very unique set of specialized skills which he puts to work on behalf of our clientele. He is being chosen to work in the United States based upon his experience and training with our Baselight products, products which are manufactured and marketed exclusively by our company.

[The petitioner] manufactures high value systems for the post production of feature films, commercials and television [programs]. The systems are technically complex and typically cost a minimum of \$300,000 per unit. They are operated by creative people who require us to provide extensive field support before, during and long after the installation. This requires individuals with in-depth knowledge of the software as well as the customized hardware platform it runs on.

As you can see the product [the petitioner] manufactures and sells is very unique and highly technical, for use by the highly specialized film technology professionals who work for our

client companies. Accordingly, we must have highly trained professionals like [the beneficiary] available to assist, train and provide ongoing support to our clients.

With respect to the beneficiary's specific qualifications, [redacted] stated that the beneficiary "has spearheaded our efforts in business development in Mexico and Latin America," and noted that he "understands the cultural and technological issues typical of film and television production companies in the region." The petitioner further stated:

His personal understanding of new, foreign and unfamiliar workflows for creating movies and visual effects helps our international clients with new techniques and capabilities, which helps our customers be more competitive in an increasingly international movie creation market. This knowledge, which is held by our all of our [sic] employees in a technical role, is recognized by our clients. In addition, he has language skills and knowledge of Linux operating systems. Much of [the beneficiary's] knowledge is based on his extensive experience with our products and unique installation and support methodologies. It accordingly sets him apart as such knowledge is not common to others in his field.

With almost two (2) years of employment at [the petitioner's parent company], [the beneficiary] has gained a wide ranging in-depth knowledge of our entire product range, all of which is specialized and extraordinarily unique. Trained in our proprietary Linux operating system and with the knowledge of how our customers use the products to create movies and visual effects, he has a unique and uncommon knowledge of our systems. Because we are a small to medium size company, we take our time to hire the right people who we feel fit the company's background, skill requirements and have the ability to learn our systems. [The beneficiary] is such an individual.

The petitioner also submitted a letter dated January 11, 2010, in which it provided a position description for the proposed position that is identical to that provided for the beneficiary's current job, as recited above. Finally, the petitioner submitted the requested organizational charts for the U.S. and foreign entities, and indicated that the foreign entity has 56 employees, while the U.S. company has eight employees. According to the charts, the foreign entity's support team includes six systems support employees and four application support employees, of which the beneficiary is one. The foreign entity also employs 12 software development staff and eight hardware development staff. The petitioner's employees include a president, two sales personnel, a worldwide support manager, two product specialists, a senior software developer and an office manager.

The director denied the petition on January 27, 2010, 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 that requires specialized knowledge. In denying the petition, the director found that the beneficiary's duties would not require "a specialized knowledge of the petitioning company's product, processes or procedures that significantly surpasses the ordinary or usual knowledge of the remainder of the petitioner's workforce." The director highlighted the petitioner's statement that the beneficiary's knowledge "is held by . . . all of our employees in a technical role." The director noted that a claim that the beneficiary is unique among a subset of the petitioner's workforce, such as, one of a few technical resources, will not be persuasive if the petitioner's definition of

specialized knowledge is so broad that it includes the majority of its workforce. The director acknowledged the petitioner's claim that the beneficiary's knowledge is based on his "extensive experience" with the company's products, but noted that mere familiarity with an organization's product or service does not constitute specialized knowledge under section 214(c)(2)(B) of the Act. The director concluded that the petitioner "has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field or within the petitioner's organization."

On appeal, the petitioner asserts that "this matter fits squarely within what Congress intended when it created the specialized knowledge category." The petitioner contends that the director's decision: "(1) ignores a great deal of the evidence provided in the initial filing and the response to request for evidence; (2) takes the language from our initial filing and RFE response out of context; and (3) is seeking to impose a standard for specialized knowledge which is so highly restrictive, it is practically impossible for anyone, even true specialists like [the beneficiary], to qualify."

The petitioner emphasizes that it develops, manufactures and sells its products to a very narrow target market, and that the products require "a great deal of experience and training in order to develop expertise." The petitioner states that the beneficiary is "an applications engineer with very detailed knowledge of post-production workflow, and also provides a direct link to the [redacted] team who adapt the product for use by customers in the Americas." In addition, the petitioner indicates that the beneficiary "uniquely combines company headquarters provided product training and specialization with Spanish native language skills so that he can work with Spanish speaking customers in the United States and Latin America and feed back their requirements to his colleagues in the USA and the UK."

With respect to the beneficiary's knowledge of the petitioner's "highly specialized array of technologically complex products," the petitioner states:

The expert knowledge of these systems is confined to very few – it is unavailable in the general labor market. Of our own employees in the UK and the USA, ONLY those in a technical role, meaning product specialists, engineers and their supervisors, have the requisite technical knowledge in order to understand and utilize these products. Of our 56 employees abroad, only 7 possess this knowledge, and of our U.S. employees, only one possesses this specialized knowledge, even though other employees possess a more general technical knowledge that does not approach the required specificity needed to succeed in the Product Specialist position.

The petitioner alleges that "USCIS did not take into account the highly unique narrow market niche that this product occupies." The petitioner reiterates that few of its employees occupy what it considers to be "technical roles," and states that, among the current U.S. staff, only one employee, the petitioner's worldwide support manager, possesses the specialized knowledge possessed by the beneficiary. The petitioner asserts that the beneficiary "is being chosen to work in the United States based upon his experience and training with our Baselight products . . . for which he has a specialized knowledge which exceeds that of the overwhelming majority of our technical staff."

The only additional evidence submitted in support of the appeal is a slightly revised organizational chart for the foreign entity on which the beneficiary is identified as "Application Support Latin America" within a support

department that includes a head of support, a head of applications support, a head of system support, a system specialist, a European support position, a system support engineer, two application support engineers, a scanner support person, and a support coordinator.

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

Standard for Specialized Knowledge

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

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

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

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

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

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among

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.

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 establish by a preponderance of the evidence 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

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the

beneficiary in a capacity requiring specialized knowledge. The decision of the director will be affirmed as it relates to this issue and the appeal will be dismissed.

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.*

The petitioner's initial description of the beneficiary's current and proposed job duties was vague and could have described the duties of any product support specialist. Specifically, the petitioner indicated that the beneficiary has been and will be using his knowledge of the petitioner's software, hardware and applications to assist in installing, supporting and providing training in the petitioner's product. The petitioner explained that it designs, manufactures, sells and supports proprietary industry-leading products in the digital post-production field; however, the petitioner failed to identify what specifically constitutes the beneficiary's specialized knowledge, how he gained such knowledge, and how the knowledge is typically gained within the organization.

Therefore, the director issued an extremely detailed request for evidence and instructed the petitioner to "specifically identify and document" the skills the beneficiary possesses with respect to the petitioner's products. The petitioner subsequently provided a lengthier description of specific tasks associated with the beneficiary's training, installation and support responsibilities, but failed to provide the type of technical details that would support the petitioner's claim that this individual beneficiary's knowledge is both specialized within the industry and advanced within the petitioner's organization. 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)). Rather, the petitioner's specialized knowledge claims were largely based on the fact that its products are proprietary, highly technical, expensive, and marketed to a niche segment of the motion picture industry.

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 claiming 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.

Furthermore, the fact that the beneficiary sells its products within a niche industry does not necessarily establish that any knowledge of such products must be specialized. Given the petitioner's claims that virtually every television show and hundreds of movies are created using the DI process for which the petitioner's products are designed, the AAO finds it reasonable to assume that there are other, similar color grading and management products available to post-production studios. Therefore, while the AAO acknowledges that the petitioner's field of expertise is much narrower than general "software engineering," the fact that the company's services are highly specialized or targeted at a certain industry, without more, is insufficient to establish that any individual employee within the company possesses or is required to utilize specialized knowledge.

On appeal, the petitioner asserts that the beneficiary's specialized knowledge is based not only on his experience with the petitioner's products, but his language skills, his "knowledge of Linux operating systems,"

and his experience with the petitioner's "unique installation and support methodologies." The AAO notes that neither the Spanish language nor Linux is specific to the petitioning organization and thus the petitioner has not established how knowledge of either constitutes specialized knowledge. With respect to the petitioner's "unique installation and support methodologies," the AAO notes that such methodologies were never mentioned, much less documented in the initial petition filing or in response to the request for evidence. The petitioner had ample opportunity to identify and document the beneficiary's specialized knowledge prior to the denial of the petition. Furthermore, other than a fleeting reference to these "methodologies" in the appellate brief, the record remains devoid of any evidence or explanation to establish how knowledge of such methodologies would rise to the level of specialized knowledge within the company. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 the petitioner's proprietary Baselight product and related components of its digital film product line. The petitioner attributes the beneficiary's specialized knowledge of this product to his 20 months of experience and training with the foreign entity, and states that such knowledge can only be gained through such "considerable" experience and training. The petitioner also refers to the beneficiary's career in "compositing technologies and color correction for film" among his qualifications, but provides no additional details regarding his prior experience and its relevance to his current work.

The petitioner has made several references to the beneficiary's company-provided training received during his employment with the foreign entity. The RFE issued on December 21, 2009 advised the petitioner that it should provide a timeline for the training and experience the beneficiary gained during his employment with the foreign entity, provide evidence of special or advanced training the beneficiary has received, and explain how the beneficiary's training or experience is uncommon or unusual compared to others employed by the petitioner or in the field of endeavor. While the petitioner referred generally to the beneficiary's training in response to the RFE, it failed to specifically address any of these requests. Any 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).

As such, the petitioner has not specified the amount or type of training its product specialists receive in the company's products or processes and therefore it cannot be concluded that the technology is significantly different compared to that developed by other companies in the industry, or that it would take a significant amount of time to train an experienced systems or applications specialist in the digital cinema field who had no prior experience with the petitioner's organization. Further, the petitioner has neither identified with any specificity nor documented any training received by the beneficiary since joining the foreign entity, nor has the petitioner articulated or documented how specialized knowledge is typically gained within the organization, or explained how and when the beneficiary gained such knowledge.

The petitioner offered little information specific to the beneficiary and his background other than providing his job description, confirming that he had been employed by the petitioner for approximately 20 months, and stating that he has a Bachelors degree, and a "career in compositing technologies and color correction for film." The petitioner has submitted multiple press releases from 2006 establishing that the petitioner's products were making an impact in the industry significantly before the beneficiary joined the foreign entity as a product specialist in April 2008. If he did in fact have a career as a colorist in the film industry, it is quite possible that he was already trained in the use of Baselight products prior to joining the foreign entity.² Furthermore, the petitioner indicates that the beneficiary has been performing the duties of a product specialist since he was hired, thus suggesting that a person with relevant industry experience could step into the role without the need for completion of a training program. Overall, the minimal evidence is insufficient to establish that the petitioner's employees in general,

² The AAO notes that the "Service and Support" section of the petitioner's public website includes a register of more than 40 freelance colorists with considerable Baselight experience. See "Services and Support Freelance Register, http://www.filmlight.ltd.uk/services_support/freelance_register (accessed on November 19, 2010), copy incorporated into record of proceeding.

or the beneficiary in particular, have been required to undergo any extensive training in the company's products and systems.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry, and knowledge that is not commonplace within the company itself. This has not been established in this matter.

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

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

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the company's products gained during his employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted by the director, the petitioner stated in its letter dated January 11, 2010 that all of its employees who serve in "technical roles" have a similar understanding of the petitioner's products and their applications in the film industry. On appeal, the petitioner states that "of our own employees in the UK and the USA, ONLY those in a technical role, meaning product specialists, engineers and their supervisors, have the requisite technical knowledge in order to understand and utilize these products." The petitioner goes on to state that of these employees, only seven employees in the United Kingdom and one in the United States possess this "specialized knowledge" while the other employees possess "a more general technical knowledge that does not approach the required specificity needed in the Product Specialist position." Thus, the petitioner states that the statement was taken out of context by the director.

It appears that the petitioner is claiming on appeal that a product specialist with 20 months of company experience who installs and supports products and trains clients, possesses specialized or advanced knowledge compared to the remainder of the petitioner's staff, which includes, for example, software and hardware development engineers, industrial and mechanical designers, and a physicist, who actually designed, developed and engineered the products over the years. Based on the petitioner's statements on appeal, only the former employee would be considered to be employed in a "technical role" requiring specialized knowledge. Furthermore, there appears to be a further division of knowledge among the petitioner's product specialists. For example, although two of the petitioning company's U.S. workers share the beneficiary's job title of "product specialist," the petitioner claims that only the "worldwide support manager," among the U.S. staff, possesses specialized knowledge. Absent some additional explanation or rationale from the petitioner it is entirely unclear why an employee who installs and supports the petitioner's products for clients is employed in a "specialized" technical role while the engineer who designed the product is not, and why some product specialists possess specialized knowledge and others do not. Rather, it is reasonable to conclude that all of these employees are in fact technical employees and that they are knowledgeable with respect to the petitioner's products and their applications in the industry.

The petitioner emphasizes on appeal that the U.S. company currently employs only one person who possesses the same specialized knowledge as the beneficiary. However, the fact that the beneficiary would be one of only two "specialized" employees in the United States is not sufficient to establish that his knowledge is truly specialized or advanced. The petitioner indicates that it specifically requires the services of a Spanish-speaking product specialist to support Latin and South American clients. There is no other explanation as to why the beneficiary was chosen for the U.S.-based position over other workers who are claimed to have the same type of experience and the AAO cannot conclude that it was because he is deemed to have an advanced knowledge of the company's products or processes. All of the foreign entity's technical employees would reasonably have knowledge of the company's digital post-production products. By this logic, any of them would qualify for L-1B classification if offered a position working in the United States as long as they were working for the foreign entity for over one year.

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."³ 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

³ 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).

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 petitioner has not successfully demonstrated that the beneficiary's knowledge of the company's products gained during his employment with the foreign entity is advanced compared to other similarly employed workers within the organization. The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, the petitioner has not established that familiarity with its proprietary products alone constitutes specialized knowledge, and has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's products is more advanced than the knowledge possessed by others employed by the petitioner, or that the products developed by the petitioner are substantially different from those used by other companies in the petitioner's industry. As the petitioner has failed to document any special or advanced qualities attributable to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "specialized knowledge" employee.

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.

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.