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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
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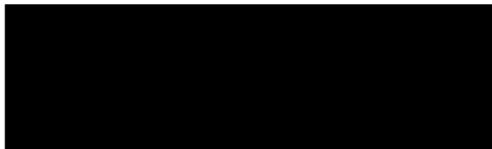
IN RE:

Petitioner: 

Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker under 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 filed this nonimmigrant visa petition seeking to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California-based company engaged in the development and distributions of vegetable seeds, claims to be the parent company of the beneficiary's foreign employer in Mexico. It currently employs a staff of 250 and claims a gross annual income of \$80 million. The petitioner seeks to employ the beneficiary in the position of Product Manager – Brassicas, for a period of three years.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 for review. On appeal, counsel for the petitioner asserts that the director applied an improper standard in determining whether the beneficiary possesses specialized knowledge, and accorded "no weight to the Petitioner's detailed and specific documentation and business reasons" for the beneficiary's proposed transfer to the United States.

I. The Law

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

¹ "Brassicas" or "brassicacae," as used by the petitioner, refers to the plant species *Brassica oleraceae*, which includes cabbage, broccoli and Brussels sprouts, among other vegetable crops. See United States Department of Agriculture Plants Database, available at <http://plants.usda.gov/java/nameSearch> (accessed on June 13, 2011, copy incorporated into record of proceeding).

- (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. Facts and Procedural History

The sole addressed by the director is whether the petitioner has established that the beneficiary has been and 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 (iv).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 9, 2009. In a letter dated April 6, 2009, the petitioner stated that the beneficiary has been offered the position of Product Manager for brassicas in the United States. The petitioner stated that he will be responsible to "guide and manage the brassicae crops in three main ways: product range management, external strategy development, and internal interface management." The petitioner described the specific proposed duties as follows:

Product Range Management:

- Produce lifecycle management from launching and introduction until product phase out plans.
- Manage the crop for maximum profitability
- Develop the vision of the product line.
- Product offering management.

- Build species or product line.

External Strategy Development:

- Business chain knowledge and relationships.
- Interactions with product managers from sister companies.
- Assess [the petitioner's] target markets.
- Define product specifications based on the market.
- Define target markets.
- Develop species strategy (long and short term).
- Global species coordination.

Internal Interface Management:

- Monitor breeding research, fitting into market needs.
- Allocation of sample seed.
- Collect and update variety information.
- Release productions.
- Calculate prorates as needed and set pricing.
- Forecast for status 1 and 2.
- Provide input to Quality Assurance department.
- IPC review/challenge.
- Substandard quality inventory acceptance.
- Marketing campaigns.
- Maintain updated product information.
- Review/challenge forecast.
- Determine margin analysis.
- Serve as internal cross functional communication liaison for the crop.

The petitioner indicated that the beneficiary has been employed with its Mexican subsidiary since April 2003 in the position of Sales Representative for the Southeast region based in Mexicali, Mexico, and has also been in charge of the Product Development for Southeast Mexico as well as Sales Representative for Central Mexico. The petitioner further described the beneficiary's responsibilities with the foreign entity as follows:

He has the responsibility to promote and sell vegetable seeds in Southeast Mexico, meet his annual sales budget and work very closely with growers to know their needs, establish field trials, negotiate operations, support our dealers promoting new products and follow up on any programs and issues with distributors as well as growers, including technical support, recommendations, and local cultural practices. His work has been focused on major crops including Brassicae, Cucurbits, Rooted and Leafy crops available in the area, and he has successfully introduced roma determinate tomatoes (Pony Express, Palomo, Pagaso & Palacio), and roma indeterminate (El Cid and Anibal). Between 2003 and 2005, [the beneficiary] concentrated on Product Development in the Bajio area including evaluation and introduction of new squashes (Lina and Citlali), successful introduction of cantaloupes (Navigator, Expedition and Altamirano), and established a close working relationship with [REDACTED] a well known [REDACTED]

The petitioner indicated that the beneficiary was awarded the title of [REDACTED] by the University of Veracruz, and joined the foreign entity with years of professional experience as a product development representative, sales and product development representative, and field supervisor and seedling production manager for other seed companies in Mexico.

The petitioner also submitted a letter dated February 25, 2009, from [REDACTED] [REDACTED] of its Mexican subsidiary, who confirmed that the beneficiary is currently employed as sales representative for the Southeast region, in charge of product development in that region and sales in Central Mexico. [REDACTED] described the beneficiary's role with the foreign entity as follows:

[The beneficiary] has the responsibility to promote and sell vegetable seeds in South East Mexico, meet his annual sales budget and work very closely with growers to know their needs, establish field trials, negotiate operations, support our dealers promoting new products and follow up on any programs and issues with distributors, as well as growers, including technical support, recommendations, cultural practices, etc.

[The beneficiary] demonstrated excellent communication and reporting skills with our Team here in Mexico, be [sic] Administration, Sales and Product Development departments; but also Product Managers and Breeders in France and the US.

[The beneficiary] knows very well the vegetable seed market, with emphasis on various crops, including – but not limited to – tomato, squash, carrot, broccoli and watermelons, and is well known and respected by our distributors and growers in Central and South East Mexico.

The petitioner submitted company information from its public website, along with a copy of its parent company's most recent annual report.

The director issued a request for additional evidence (RFE) on April 14, 2009, in which she instructed the petitioner to provide the following: (1) the number of persons holding the same or similar position as the beneficiary at the U.S. location where the beneficiary will be employed; (2) an explanation of how the duties the beneficiary performed abroad and those he will perform in the United States are different from those of other workers employed by the petitioner or other U.S. employers in this type of position, supported by documentary evidence; (3) a more detailed explanation of exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge, and whether it is used or produced by other employers in the United States and abroad; (4) an explanation of 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 and in comparison to those employed by the petitioner in the beneficiary's field; and (5) an explanation of the impact upon the petitioner's business if it is unable to obtain the beneficiary's services.

In a response dated May 22, 2009, counsel for the petitioner cited to the regulatory definition of "specialized knowledge" at 8 C.F.R. § 214.2(l)(1)(ii)(D), and asserted that the regulations "do not require that the applicant's work history be 'uncommon, noteworthy or distinguished.'" Counsel emphasized that the beneficiary has six years of experience with the petitioner's products, services, research, equipment, techniques and other interests and their application in international markets, as well as experience in the organization's processes and

procedures, consistent with the regulatory definition. Counsel reiterated the previously submitted description of the beneficiary's duties with the foreign entity, and concluded:

[The beneficiary's] six years of experience resulted in encyclopedic knowledge of certain [company] products, management techniques, research procedures, and the application of that knowledge and those procedures in the international market, specifically Mexico. His three key responsibilities, working with growers, promoting new products, and assisting in product development, gave him a depth and breadth of experience with [the petitioner's] products, procedures and marketing that include proprietary knowledge of [company] research, field trial methodology, and [company] technical and research support. Also, while working for [the petitioner's subsidiary] in Mexico, he developed an inside knowledge of and relationship with the [company's] customer list and [company] strategies and internal research information.

Counsel further stated that, as the petitioner develops and expands seed production in Mexico, Central and South America, "product managers with specialized knowledge related to specific [company] seed crops (including cucurbits, brassicae, melon, solanaceae) are essential to the company's success." Counsel asserted that "an individual who did not have this specific work history with the company would not have this valuable level of knowledge and experience to keep the [company's] production increasing and staying one step ahead of competitors in the global market."

The petitioner submitted a brief letter dated May 19, 2009 in support of the RFE response, in which it addressed the director's requests as follows:²

The position of Product Manager – Cucurbits is a key position for [the petitioner]. Product development is increasing in Mexico, Central America and South America, and gives us a competitive advantage to get our products to the market more quickly. Partnership interactions and team work with American and European breeders is essential for continued success.

[The beneficiary] was specifically selected for this position based on his six years of experience with [the foreign entity] in Mexico where he was responsible for product development and sales for Central Mexico. His specialized knowledge of [company] products is invaluable, and an external hire would not have this level of knowledge and experience. [The beneficiary] has a long professional history including product development experience with international cucurbit breeders both during his employment with [the petitioning organization] and his prior positions in Mexico from 1986 to 2003.

The director denied the petition on June 2, 2009, 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. In denying the petition, the director emphasized that petitioner failed to respond to most of the inquiries set forth in the RFE. The director acknowledged that the petitioner provided a list of the beneficiary's duties, but emphasized that the petitioner did not explain or provide documentary evidence

² The petitioner acknowledges on appeal that it misstated the beneficiary's job title in the letter dated May 19, 2009, and confirms that he would be the product manager for brassicae crops.

supporting a finding that the duties require specialized knowledge. The director therefore determined that the petitioner did not specifically identify the specialized knowledge that the beneficiary purportedly possesses, nor articulate how this knowledge is advanced or otherwise "special." The director concluded that the evidence submitted failed to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field.

On appeal, counsel for the petitioner asserts that the director's decision "blatently [*sic*] ignored substantial evidence provided by the Petitioner" and "gives no weight to the Petitioner's detailed and specific documentation and business reasons" for the beneficiary's transfer to the United States.

With respect to the director's finding that the petitioner failed to submit a complete response to the RFE, counsel asserts that the petitioner's response included "a very specific description of the beneficiary's six years of experience with [the petitioner's] seed products, customer service, specialized growing techniques, product development, and establishment of field trials." Counsel contends that the petitioner's statements adequately describe the beneficiary's "advanced level of knowledge and expertise in [the petitioner's] products, processes and procedures."

Counsel refers to the list of proposed job duties submitted at the time of filing and asserts that such duties "require a close knowledge of [the petitioner's] products, its product life cycle management, knowledge of the company's target markets, product specifications, species strategy, global species coordination, monitoring breeding research of the products subject to [the beneficiary's] management." Counsel contends that the position clearly requires specialized knowledge of company products, their marketing, and "numerous technical aspects that are not generally available in the wider job market." Counsel further asserts that the position requires "highly technical internal management and product information" that "must be considered specialized knowledge of [the petitioner's] products and corporate procedures."

Counsel states that "[i]t is hard to imagine that the company's desire to promote [the beneficiary] to this important position, a key management position, for one of its key product areas would not be based upon his prior experience and intimate knowledge of the company and its products in international markets." Counsel contends that the majority of the information requested in the RFE had been provided in the petitioner's initial letter, noting that "there is no requirement that the company search the United States for a U.S. worker who could be trained in internal, highly guarded information held by [the company] with respect to its seed products, its research and its marketing strategies."

Counsel further objects to the director's citation of three AAO decisions issued between 1981 and 1988 which discuss "specialized knowledge," noting that "the weight of these decisions has been altered by the evolution of 'the specialized knowledge' definition." Counsel discusses this "evolution" and states that "we can say with some clarity that 'specialized knowledge' need not be proprietary, but should have a level of weight or value that is of importance to some aspect of the petitioning organization's successful operations and applications in international markets." Counsel contends that these criteria were demonstrated and documented in the petitioner's letters. Counsel asserts that an external hire could not have the beneficiary's level of knowledge and experience, and notes that the beneficiary's "level of knowledge for the offered position is unique and probably irreplaceable" to the extent that the company will suffer financial hardship and harm to its business development if it cannot obtain the beneficiary's services.

Counsel contends that the director erred by relying on case law which precedes the Immigration Act of 1990, the current definition of specialized knowledge, and agency guidance regarding the interpretation of specialized knowledge, specifically a 1994 legacy Immigration and Naturalization Service memorandum.³ Finally, counsel asserts that the director further erred by giving little or no weight to the documentary evidence provided, specifically, the petitioner's statements regarding the beneficiary's role and the value of his six years of experience with the petitioner's subsidiary. Counsel states that the petitioning company is part of a large international organization "well known for its products and also for the breadth of its proprietary research in seed and crop production." Counsel asserts that "the decision is unnerving in its refusal to give any weight to the evidence provided by [the petitioner] and its business decision to promote and transfer [the beneficiary]."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in a capacity requiring specialized knowledge.

III. The Standard for Specialized Knowledge

Looking to the language of the statutory definition at Section 214(c)(2)(B) of the Act, 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).⁴

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)).

³ Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Special Knowledge," (March 9, 1994).

⁴ Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

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

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. 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', 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.

The inherently subjective standard serves to make the L-1B classification more flexible and capable of responding to changing economic models. Depending on the facts of the specific case, a petitioner may put forward a novel argument that is based on the employer's specific situation. Or, as in the present case, a knowledgeable petitioner may choose to rely on aspects of the INS memoranda to frame his or her argument.

The ██████████ Memorandum referenced by counsel provided various scenarios, hypothetical examples, and a list of six "possible characteristics" of aliens that would possess specialized knowledge. Adding a gloss beyond the plain language of the statute or the definitions of "special" and "advanced," the memorandum surmised that specialized knowledge "would be difficult to impart to another individual without significant economic inconvenience." *Id.* at p.3. The memorandum also stressed that the "examples and scenarios are presented as general guidelines for officers" and that the examples are not "all inclusive." *Id.* at pp. 3-4. Therefore, even though the ██████████ Memorandum does not constitute a binding legal standard, it does describe possible attributes that would support a claim of specialized knowledge. However, the petitioner would be unwise to simply parrot the memorandum, without submitting supporting evidence, and expect USCIS to approve a petition.

The ██████████ Memorandum concluded with a note about the burden of proof and evidentiary requirements for the classification:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at p.4.

Pursuant to section 291 of the Act, the petitioner bears the burden of proof in these proceedings. The petitioner must submit relevant, probative, and credible evidence that would lead the director to believe that the claim is "probably true" or "more likely than not." *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

IV. Analysis

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The decision of the director will be affirmed as it relates to this issue and the appeal will be dismissed.

As a preliminary matter, the AAO will address counsel's assertion the director erred by giving "no weight" to the petitioner's statements regarding the beneficiary's claimed specialized knowledge and the business reasons for his transfer, despite the fact that the petitioning company is a member of a large and well-known international organization. The AAO acknowledges that there may be limited instances in which a statement from the petitioner alone is sufficient to establish a beneficiary's eligibility as a specialized knowledge employee. As noted above, Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis.

When a petitioner does not adequately articulate with specificity the nature of the claimed specialized knowledge or how such knowledge is typically gained within the organization, or if the petitioner's statements otherwise fail to establish the beneficiary's eligibility, the regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The regulation at 8 C.F.R. § 214.2(l)(3)(viii) provides that the petitioner shall submit "such other evidence as the director, in his or her discretion, may deem necessary."

The director does not have to articulate a doubt regarding the accuracy or credibility of the petitioner's assertions in order to justify a request for corroborating evidence of eligibility or a request for additional explanation regarding the nature of the beneficiary's claimed specialized knowledge. The director in this matter simply found that the information provided by the petitioner in the form of statements from authorized officials of the organization insufficient to establish eligibility for L-1B classification, so she exercised her discretion to request additional evidence.

Counsel implies that if a large international corporation provides a job description for the beneficiary and states that a beneficiary has specialized knowledge and will be employed in a specialized knowledge capacity, the petition should be approved without additional evaluation. Counsel's viewpoint does not allow for a situation in which the petitioner's opinion of what constitutes "specialized knowledge" simply does not comport with what the regulatory and statutory definitions, case law and policy guidance interpreting the term "specialized knowledge" require, or is simply not sufficiently detailed to establish eligibility by the preponderance of the evidence standard.

Here, the AAO finds that the director did not abuse her discretion by requesting evidence to establish that the beneficiary's duties are special or advanced in relation to others, or by inquiring as to how the beneficiary's experience or training differs from other similarly-employed workers within the petitioner's organization.

The AAO will now turn to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and has been and will be employed in a capacity requiring specialized knowledge. 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(i)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated or documented a sufficient 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 sales representative or product manager employed by the petitioning organization or in the petitioner's industry at-large.

The petitioner failed to articulate, with specificity, the nature of the claimed specialized knowledge. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 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 petitioner repeatedly states that the beneficiary "clearly" has specialized knowledge of the organization's products, services, research, equipment, techniques, management and other interests and their application in international markets, and an advanced level of knowledge or expertise in the organization's processes and procedures as a result of his six years of experience as a sales representative. However, the petitioner failed to describe the beneficiary's work experience in detail nor did it explain how such work experience differentiates his knowledge from that held by other similarly employed sales representatives within the foreign company or within the petitioner's industry.

For example, the foreign entity's general manager stated that the beneficiary "demonstrated excellent communication and reporting skills" and "knows very well the vegetable seed market" with emphasis on tomato, squash, carrot, broccoli and watermelons. Again, any professional sales representative working in the seed market in North America would likely possess similar knowledge and skills. While the foreign entity's general manager notes that the beneficiary is well known and respected by the company's distributors and growers, the petitioner did not explain how familiarity with these business associates rises to the level of specialized knowledge. It cannot be concluded that such experience imbued the beneficiary with his claimed specialized or advanced knowledge. The petitioner's description of the beneficiary's current duties abroad do not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other sales representatives.

In fact, the information provided in the beneficiary's resume reveals that he performed nearly identical duties as a sales and product development representative for two unrelated Mexican entities between 1994 and 2003. During this time, he was responsible for the evaluation, introduction and sale of various vegetable crops in Central and South Mexico, including brassicae, cucurbits, rooted, leafy, squash, broccoli, cucumber and others. It appears that he gained much of the essential product and market knowledge needed to perform the duties of a sales representative with the petitioner's organization prior to joining the foreign company in 2003.

The AAO acknowledges that the petitioner did state in response to the RFE that the beneficiary acquired "proprietary knowledge of [company research], field trial methodology and [company] technical research support," as well as "an inside knowledge of and relationship with [the company's] customer list and [company] strategies and internal research information." Despite the director's request for a detailed explanation of any special or advanced duties the beneficiary performs, a detailed explanation of exactly what constitutes the beneficiary's knowledge and a detailed explanation of how the beneficiary's training and experience compare to similarly employed workers, the petitioner offered no further explanatory information in response to the RFE. 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).

Overall, the petitioner's explanations are written in broad and conclusory terms and offer little insight into exactly what constitutes the beneficiary's specialized knowledge or how he gained it during his employment with the foreign entity. 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. The petitioner implies that merely working for the foreign entity for a significant length of time is sufficient to bestow "special knowledge" or an "advanced level of knowledge." While it may be correct to say that the beneficiary is a productive and valuable employee, the petitioner's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any experienced employee to enter the United States as a specialized knowledge worker. The fact that the beneficiary was chosen for a promotion and transfer to the United States, without more, does not establish that his knowledge of the company's products or processes is advanced compared to the knowledge possessed by others within the company.

Furthermore, the petitioner provided no information regarding what type of knowledge or experience is "typical" for a sales representative in the company. While the beneficiary's knowledge may be advanced compared to some workers in the company, it is reasonable to compare him specifically to other workers within his own occupation in evaluating whether his knowledge is truly specialized or whether it can be considered "advanced" compared to the knowledge possessed by other employees of the company. The petitioner offered no evidence or explanation that would differentiate the beneficiary from any other similarly-employed professionals in the foreign entity. 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. at 53.

The AAO notes that the petitioner included excerpts from its public website in the record of proceeding. At the time of review, the website contained two openings for "product manager" positions in the petitioner's online Career Center. According to the job listings, the product manager position requires a Bachelor's degree in Agronomy or Agricultural Science/Engineering and three to five years experience in breeding, seed sales,

seed development or vegetable production.⁵ Therefore, while the beneficiary's prior experience as a sales representative with the foreign entity would certainly make him well-qualified for the position, the AAO cannot conclude that the position requires specialized knowledge particular to the U.S. company or its foreign affiliates.

While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary, the petitioner cannot satisfy the current standard merely by establishing that the beneficiary's purported specialized knowledge is proprietary. The knowledge must still be either "specialized" or "advanced." As discussed above, the elimination of the bright-line "proprietary" standard did not, in fact, significantly liberalize the standards for the L-1B visa classification.

Reviewing the precedent decisions that preceded the Immigration Act of 1990, there are a number of conclusions that were not based on the superseded regulatory definition, and therefore continue to apply to the adjudication of L-1B specialized knowledge petitions. In 1981, the INS recognized that "[t]he modern workplace requires a high proportion of technicians and specialists." The agency concluded that:

Most employees today are specialists and have been trained and given specialized knowledge. However, in view of the [legislative history], it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees. The House Report indicates the employee must be a "key" person and associates this employee with "managerial personnel."

Matter of Colley, 18 I&N Dec. at 119-20.

In a subsequent decision, the INS looked to the legislative history of the 1970 Act and concluded that a "broad definition which would include skilled workers and technicians was not discussed, thus the limited legislative history available therefore indicates that an expansive reading of the 'specialized knowledge' provision is not warranted." *Matter of Penner*, 18 I&N Dec. at 51. The decision continued:

[I]n view of the House Report, it cannot be concluded that all employees with any level of specialized knowledge or performing highly technical duties are eligible for classification as intra-company transferees. Such a conclusion would permit extremely large numbers of persons to qualify for the "L-1" visa. The House Report indicates that the employee must be a "key" person and "the numbers will not be large."

Id. at 53.

According to the reasoning of *Matter of Penner*, work experience and knowledge of a firm's technically complex products, by itself, will not equal "special knowledge." USCIS must interpret specialized knowledge to require more than fundamental job skills or a short period of experience. An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be untenable, since it would allow a petitioner to transfer any experienced employee to the

⁵ See "Product Manager," Harris Moran's Career Center <http://harrismoran.com/contacts/careercenter/may3_productmanager.htm> (last accessed on June 1, 2011, copy incorporated into record of proceeding).

United States in the L-1B classification.

The proprietary specialized knowledge in this matter is stated to include knowledge of the company's internal research, field trial methodologies, and customer list. However, it is reasonable to believe that any company in the petitioner's agricultural engineering field would develop its own research, methodologies and unique customer list. The petitioner has not described or documented its research, strategies and methodologies in any detail nor claimed that these company interests significantly differentiate it from its competitors. Simply asserting that the processes and technologies are proprietary will not suffice. The petitioner never establishes the difference between the petitioner's products, research and methodologies and those used in the vegetable seed industry which requires knowledge not possessed generally by similarly educated and experienced sales representatives in the industry.

The petitioner also has not specified the amount or type of training its staff members receive in the company's internal research, methodologies, processes and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced sales representative who had no prior experience with the petitioner's family of companies. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Further, since it appears the beneficiary was able to assume a sales representative role with product development components with no prior work experience within the company, then it is reasonable to question to what extent the knowledge required to perform the duties is truly specific to the petitioning organization, and not general knowledge the beneficiary gained during his prior professional work experience or as part of his academic training in agronomy. Based on the evidence submitted, it appears the petitioner's internal research, field trial methodologies and other internal information can be readily learned by employees who otherwise possess the requisite technical and functional background in the vegetable seed industry.

All employees can be said to possess unique skills or experience to some degree. Moreover, any 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 its products, processes or methodologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. Here, the petitioner's statements suggest that it considers its experienced employees to have specialized or advanced knowledge of the petitioner's products, research methodologies and customer list. The fact that other workers outside of the petitioning organization may not have very specific knowledge of the petitioner's internal research and customer list is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing such details to a similarly educated and experienced sales representative.

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 products and research methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

V. Conclusion

The AAO does not dispute the beneficiary is a skilled employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers who are similarly employed elsewhere. The beneficiary's duties and technical skills demonstrate that he possesses knowledge that appears to be common among sales representatives in the petitioner's industry. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other seed development companies.

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.

Therefore, based on the evidence presented and applying the statute, regulations, and binding precedents, the petitioner has not established that the beneficiary has specialized knowledge or that he has been or would be employed in a capacity involving specialized knowledge. Accordingly, the appeal will be dismissed.

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.