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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**



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DATE: **NOV 15 2011** Office: VERMONT SERVICE CENTER FILE:

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

The petitioner filed this nonimmigrant visa petition to extend the beneficiary's employment as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a computer software development and consultancy company and has employed the beneficiary in the United States since November 2006 pursuant to his admission in L-1B status under its Blanket L petition. The petitioner now seeks to extend the beneficiary's status so that he may serve in the position of Systems Analyst (Banking & Financial Services Vertical) for a two-year period. The petitioner indicates that the beneficiary will be assigned to a client worksite in Omaha, Nebraska.

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 contends that, in denying the petition, the director applied a restrictive standard for specialized knowledge that has no basis in the governing statute, regulations, precedent decisions or USCIS policy. Counsel asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary possesses specialized knowledge even under the "restrictive standard" applied. Counsel submits a brief and additional documentary evidence in support of the appeal.

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.

- (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.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product

or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

Due to the nature of the L-1 Visa Reform Act, the two issues raised by the director in the request for evidence issued on February 10, 2009 – whether the petitioner has established that the beneficiary possesses the requisite "specialized knowledge" and whether the requirements of the L-1 Visa Reform Act have been satisfied – are independent but legally intertwined. Prior to evaluating whether the L-1 Visa Reform Act applies, USCIS must determine whether the beneficiary is employed in a specialized knowledge capacity. If the beneficiary is not employed in this capacity, the petition may be denied on this basis and there is no need to address the requirements of the L-1 Visa Reform Act. Regardless, when a petitioner fails to establish that a beneficiary possesses specialized knowledge, then it cannot establish that the beneficiary's placement at an unaffiliated client's worksite would be in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

II. Facts and Procedural History

The two issues addressed by the director are 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 January 30, 2009. In a letter dated January 28, 2009, the petitioner stated that the beneficiary will be employed "in a specialized knowledge capacity in a key technical lead role of Systems Analyst on our valuable ongoing FDFIS Application Management project for First Data Resources located in Omaha, Nebraska."

The petitioner indicated that the beneficiary has been employed with its corporate group since joining its Indian affiliate in November 2004, and has since specialized in the development of projects in the company's Banking and Financial Services domain. The petitioner explained that its U.S. client provides electronic commerce services worldwide including payment services, merchant services and card issuing services. The petitioner stated that the purpose of the project to which the beneficiary is assigned is to define and advise on the requirements and computer solutions to provide image processing infrastructure, support personalized images on the background of credit/debit cards, administer control of images, and meet strategic organizational goals. The petitioner further described the project as follows:

It is a highly sophisticated and complex system that requires database systems and multiple Legacy systems that must operate in cohesion. The Project involves implementation and support of existing and new applications. The Project is executed in an environment with emphasis on

Project management and control, coordination of project performance and in-depth system analysis and business requirements determination. The project requires coordination between different teams to support critical information systems across First Data. Image processing is a specialized field which involves deep knowledge about images, their types, layout and storage and retrieval mechanism. The project also aims at creating reusable components to be consumed by other teams. There are about 30 applications which we are required to maintain, enhance the functionality of some of them depending upon the client requirements, and provide 24x7 support to all the applications. We are also required to build new applications as and when the need arises to support the business requirements of the First Data clients. The Project is based on 'PhotoConvert' framework which is indigenous to First Data. . . . The objective is to create an embossing file which can be used to produce cards at the production floor with a customized background image. Some of the processing on image includes resizing, cropping, compression, blending and masking. For the images which we receive manually from the First Data clients we scan them, process them in our system and then upload to mainframe.

The petitioner indicated that the beneficiary's duties as a Systems Analyst assigned to the FDFIS project would include the following:

[The beneficiary] will [be] involved in the requirement analysis design, design review, code review unit testing development, implementation, quality control testing, deployment, and integration of the new applications and maintenance of existing applications. He will also be involved in the migration of existing applications to .net, and the development of new tools. He will interact with the CEO and provide inputs [sic] if required. He will handle and manage multiple projects without missing the deadlines and will be involved in post production issues. In addition, he will also be involved in automating the current manual process, and managing the database and version control for the group. Furthermore, he will interact with the client and third party testing teams of the project, add values [sic] to the client by building automation tools for the other teams, and will be involved in the maintenance of the existing applications (approximately 30) and support them in case of any issue. He will be the Technical Team Lead for the project in which he will mentor and transfer his knowledge to new team members.

He will also be providing the production support and will be responsible for creating automation tools to eliminate the manual process. He will handle the change requests and be responsible for creating the metrics on the different stages of the project. He will be working with C#, [REDACTED] and JavaScript in the implementation of this project.

The petitioner explained that the project requires the beneficiary's functional knowledge of the banking and financial sector, debugging and programming skills, knowledge of Microsoft technologies, knowledge related to image processing, and experience with maintaining and interacting with AS400 database. The petitioner noted that the beneficiary, for the current project and for the last four years, has been utilizing Agile Methodology to

speed up the development process and reduce risk, and notes that "with the help of new Microsoft technologies, he has been able to develop more tools and automate most of the day to day tasks."

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

[The beneficiary] has acquired specialized knowledge of the technologies required for the application development and maintenance of the FDFIS Application Management project. He has strong industry knowledge of [REDACTED]

[REDACTED] He played a major role in the requirement phase of the enhancement of this application. Furthermore, he developed application knowledge relating to the project and his experience is useful during application enhancements and production support. [The beneficiary's] thorough knowledge of [the petitioner's] processes for the FDFIS Application Management Project has rendered him an expert in application maintenance and development and has highlighted his specialized knowledge. He coordinates with the offshore team, clarifies offshore queries and reviews tasks. [The beneficiary] possesses extensive, advanced specialized knowledge of [the petitioner's] proprietary processes and technologies, having trained and worked extensively with these technologies on First Data Corp.'s projects. These are proprietary systems that our company uses to implement projects for our clients. He utilizes a host of internal tools that include E-tracker to track application maintenance and value management activities on a daily basis, E-Metrics to collect, consolidate and analyze project metrics, and assist in the efficient calculation of quantifiable project specifications, E-Cockpit, to graphically represent quantifiable project data. . . . , Q-Smart to automate quality assurance through powerful built-in workflow mechanisms, Channelone for knowledge repository, and First Data internal tools like Fotoview for image conversions, image capture for compression and blending, and helpdesk for production support.

The petitioner stated that "more importantly" the beneficiary "utilizes the professional experience and knowledge of First Data Corp.'s applications gained during his offshore work with the company," and his "advanced knowledge of our proprietary software quality tools and methodologies." The petitioner indicated that the company's proprietary tools are used in every stage of the project. In addition, the petitioner emphasized that the beneficiary's "concentrated focus on the development and implementation of this client's technology cannot be passed onto another candidate due to the intense and lengthy time period required for acquaintance with First Data Resources business processes and related technology." The petitioner noted that the beneficiary's familiarity with the FDFIS Application Management project and his technical expertise make him an asset to both the petitioner and the client, First Data Resources.

The petitioner further stated that, in addition to his knowledge of the petitioner's proprietary tools such as Qview and Qsmart, the beneficiary has a "unique understanding of our Onsite/Offshore Methodology," and is "extremely well versed in the procedures and protocols" that are integral to this methodology.

The petitioner concluded by relying on a 1994 legacy Immigration and Naturalization Service (INS) policy memorandum, which addressed the interpretation of specialized knowledge, in support of the claim that the beneficiary possesses the requisite specialized knowledge.¹ The petitioner asserted that "under the controlling legal standards, [the beneficiary] clearly possesses specialized knowledge since he has advanced technical skills and unique experience with our offsite operations, as well as highly valuable expertise using our proprietary tools and internal systems." The petitioner stated that the beneficiary possesses advanced knowledge of the company's proprietary systems and technologies which cannot be gained outside the organization, and is a unique asset to the company who assists in ensuring its competitive position in the marketplace.

The petitioner submitted the beneficiary's detailed resume in support of the petition. The resume shows that the beneficiary completed a Master of Computer Applications in India in 2004, and joined the petitioner's foreign affiliate in November 2004. The beneficiary indicates that he completed several courses through the "Cognizant Academy," including two months of entry-level training in "Dot Net" technologies. The beneficiary indicates that he is a Microsoft Certified Professional in VB.Net. According to the beneficiary's resume, he began working on the FDFIS Application Management project on July 28, 2008. He indicates that between January 2005 and July 2008, he worked on the Indymac Maintenance Support Project for Indymac Federal Bank, FSB in Pune, India and at the client's site in Pasadena, California.

The director issued a request for additional evidence (RFE) on February 10, 2009, in which he advised the petitioner that the initial evidence did not establish that the beneficiary has been or will be employed in a specialized knowledge capacity. The director noted that, notwithstanding the petitioner's claim that the beneficiary possesses specialized knowledge of the FDFIS Application Management project, the record shows that he has been assigned to this project only since July 2008. The director instructed the petitioner to provide the following additional information and documentation: (1) a description of the beneficiary's typical workweek, including a discussion of the specialized nature of his duties; (2) the number of employees working on the same project in the United States and explanation of such employees' duties and training compared to the beneficiary's; (3) a copy of the contract with the client with which the beneficiary will be working; (4) a record from the company's human resources department detailing the manner in which the beneficiary has gained his/her specialized knowledge, including relevant information regarding training courses the beneficiary completed; (5) the minimum amount of time required to train an employee to fill the proffered position; and (6) the number of similarly employed workers in the organization, and, of these employees, the number who have received similar training.

The director advised the petitioner that it did not appear that the breadth of the beneficiary's knowledge is different from that ordinarily encountered in his field or that his knowledge of the petitioner's processes and procedures is substantially different from or advanced in relation to that of any similarly-employed systems analyst.

¹ See Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Special Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum").

In a response dated May 1, 2009, the petitioner emphasized that the beneficiary has been in the United States on an L-1B visa and has the specialized knowledge required for continued onsite employment in a specialized knowledge capacity. Specifically, the petitioner stated:

In addition to possessing special knowledge of [the petitioner's] products and methodologies, [the beneficiary] also has technical expertise. [The beneficiary] gained his intimate knowledge of the [company-designed] solutions for client's systems by working with [the foreign entity] since November 2004 and working with [the petitioner] in the U.S. as a Systems Analyst in L-1B status since November 2006 on this FDFIS Application Management project at [the petitioner's] client First Data's client site. The knowledge he has is not generally known within [the petitioning company] and is of some complexity.

The petitioner stated that it would be difficult to impart the beneficiary's knowledge and years of hands-on expertise to another associate without significant economic inconvenience to both the company and its client, and that the loss of the beneficiary as an onsite resource could lead to the loss of future business with First Data, as it would cost a great deal of money and time to train others to take the place of the petitioner's employees who have been working onsite for years.

The petitioner reiterated its description of the FDFIS Application Management project, noting that the project is serviced by one of the petitioner's "specialized vertically-oriented business segments, Banking and Financial Services." The petitioner stated that, unlike its competitors, it is "the only company organized around business units/domain expertise," rather than by region or development center.

In support of its claim that the beneficiary possesses specialized knowledge, the petitioner stated that the beneficiary has been working for its client, First Data, since he was transferred to the United States in L-1B status in November 2006. Specifically, the petitioner stated:

During his 4+ years with [the petitioner] and his time spent starting this project he has gained in-depth knowledge that is not generally known within [the company], and certainly not available outside of [the company] in the industry. Indeed, because his knowledge surpasses that usually found within [the company], [the petitioner] seeks to continue to employ [the beneficiary] onsite so that he may continue to help the offshore and onsite team collaborate more closely on this specific FDFIS Application Management project.

The petitioner indicated that the beneficiary has performed "highly advanced duties" during his tenure working onsite with the First Data team. The petitioner indicated that the beneficiary devotes 10 percent of his time to requirements gathering; 10 percent of his time to analysis and design; 40 percent of his time to software development tasks, including impact and risk analysis, designing solutions from requirement specifications, coding, code review and unit testing, test plan creation, software release, and development of tools and reusable components; and 40 percent of his time to production support, which includes oncall support, analysis and

resolution of production failures in the system, answering queries and questions related to image processing, and assisting the production floor in resolving image processing errors.

The petitioner stated that the beneficiary possesses extensive knowledge of the FDFIS Application Management project, advanced expertise of the petitioner's systems and processes, and experience working onsite for the petitioner's client which would be extremely difficult to replicate. The petitioner emphasized that the beneficiary "has specialized knowledge of the technologies, standards and methodologies required to serve in the areas of production support and software development for various enhancements, projects and maintenance of Structured Query Language (SQL) server." In addition, the petitioner stated that the beneficiary "played a major role in the initial phases of the FDFIS Application Management project and is familiar with the internal tools used in First Data's platforms including Microsoft .Net framework 3.5, VB.Net language, C#, Asp.NET, Webservice Architecture, Visual Basic 5, XML, AJAX, ASP, Image API's, WMI, COM/DCOM technologies, Windows Communication Foundation (WCF), Basics of AS400 and SQL Server 2005."

The petitioner further described the beneficiary as "the key resource in the Banking and Financial Services domain at First Data," noting that he is the point-of-contact for all other testers assigned to the project. The petitioner noted that the beneficiary's expertise in the Banking and Financial Services domain has made him particularly critical to both the company and its client. The petitioner noted that the beneficiary's responsibilities are unique as he is responsible for both software development and production support management, a role which requires him to use the PhotoConvert and ImageCapture platform tools which are indigenous to First Data. The petitioner asserted that all of these attributes establish that the beneficiary "amply fits the definition of a key employee," as his "knowledge of the various technologies on which applications are built and his experience with the banking and financial industry sector combine to make this skill set hard to find and it earns the description 'specialized knowledge.'"

The petitioner also emphasized the importance of the beneficiary's role as onsite coordinator between the client and the offshore team, and noted that it would be difficult to transition another employee to take on this role. In this regard, the petitioner stated:

[The beneficiary's] past experience working as a member of [the petitioner's] team on this FDFIS Application Management project using [company] processes, tools, and methodologies make him a vital component for [the company's] projects with First Data Inc. (First Data). He is well versed with various software development tools and standards which are specifically followed by [the company] on this FDFIS Application Management project and extensive training for any new developers to fill in his position as required. There is not sufficient time or bandwidth to invest for this training as this part of FDFIS Application Management project must be completed in the coming months....

The petitioner indicated that the beneficiary himself has undergone "both formal and informal training to advance his technical knowledge, as well as to understand the industry." The petitioner noted that it "looks to their employees who have years of on-the-job experience with similar projects, rather than just those with classroom

training and education, to be members of [the company's] vital projects." The petitioner stated that the beneficiary has 475 hours of formal classroom training, and has undergone continuous informal training, knowledge sessions and has years of experience. In addition, the petitioner emphasized that the beneficiary gained most of his knowledge for the FDFIS project from working on the project for First Data at the client site "since November 2006." The petitioner indicated that the combination of the beneficiary's formal training and experience with and knowledge of the project make him specialized.

The petitioner provided a chart detailing the beneficiary's training, with course titles, course description, and course duration. Between November 22, 2004 and January 5, 2005, immediately being hired by the foreign entity, the beneficiary completed an Entry Level Training program which included courses in VB.Net & ADO.Net, Visual Basic, ASP.Net, Oracle, Software Testing, Client Service Concepts, OOPS Concepts, Database Fundamentals, Principles of Software Engineering, Data Structures & C, Essence of Program Design, Operating System Concepts, and Cognizant Quality System. According to the course descriptions, the petitioner's methodologies and best practices in these areas were included as part of the curriculum. In February and March of 2005, the beneficiary underwent an additional 40 hours of functional training, completing "Foundation to Banking" and "Mortgage Banking." The beneficiary has also completed four hours of training in eTracker, 15 hours of training in AJAX, 10 hours of training in Fundamentals of XML, and Basics of QTP.

Finally, the training record indicates that the beneficiary completed 150 hours of "First Data Application Training" from August to September 2008, twelve hours of programming with C# and a 6-hour training course titled "Level 1 Credit Cards."

The director denied the petition on May 12, 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 completing a short period of training to acquire knowledge of an employer's tools, procedures and methodologies does not automatically qualify as specialized knowledge. The director observed that the beneficiary's duties and the skills required to perform them, as described by the petitioner, appear to be common among systems analysts working for the petitioning organization and others in the information technology industry.

The director further noted that the petitioner had failed to submit requested evidence that would have assisted in differentiating the beneficiary from other similarly-employed workers, such as additional information regarding the composition of the petitioner's team at the client's worksite. The director concluded that the petitioner failed to establish that the beneficiary's knowledge can be categorized as advanced compared to the industry at large, or compared to the rest of its own workforce.

On appeal, counsel asserts that the director applied a restrictive standard for specialized knowledge that "has no basis in law or Service policy." Counsel asserts that the evidence establishes that the beneficiary is a "key employee" who holds special knowledge of the petitioner's methods, processes, procedures, tools and management, and thus qualifies as a specialized knowledge worker under existing legal standards and agency guidelines. In this regard, counsel asserts that the beneficiary's day-to-day duties required him to utilize

proprietary software quality assurance tools developed by the petitioning organization, such as eTracker, Qsmart, eMetrics, eCockpit and Prolite, which have been configured to meet the unique requirements of the FDFIS Application Management project.

Counsel also states that "apart from being internally-developed by [the petitioner], these tools and methodologies require extensive preparation and analytics, programming and software development skills that are advanced and elevated within the occupation," such that "only a handful of professionals within the occupation possess such advanced skills and preparation."

Counsel challenges the director's standard for specialized knowledge noting that the decision "appears to limit the definition of 'specialized knowledge' to knowledge that is more complex than that held by others within the company and in the industry," and in so doing, disqualifying key employees who possess specific, distinctive and advanced knowledge that may be similar in complexity but distinct in specific features from that normally held in the industry." Counsel relies on the regulatory and statutory definitions of "specialized knowledge" and the above-referenced Puleo memorandum in support of the claim that the beneficiary possesses the requisite specialized knowledge. Counsel contends that the director's findings that specialized knowledge must be "significantly beyond average" or "advanced relative to the industry at large" contradicts the existing law and agency guidance.

Subsequent to the filing of the appeal, the petitioner provided a copy of its Master Development Agreement with its U.S. client, First Data Resources, Inc., which the petitioner maintains that it was previously unable to provide due to confidentiality concerns.

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

III. The 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).²

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

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

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

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

² Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

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.

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 petitioner may choose to rely on aspects of the INS memoranda to frame his or her argument.

The Puleo 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 Puleo Memorandum does not constitute a binding legal "standard," it does describe possible attributes that would support a claim of specialized knowledge. The petitioner would, however, be unwise to simply parrot the memorandum, without submitting supporting evidence, and expect USCIS to approve a petition.

The Puleo 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.

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. 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 documented any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced systems analyst employed by the petitioning organization or in the industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'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 asserts that the beneficiary possesses specialized knowledge of the systems and technologies

required for the development and implementation of the FDFIS Application Management project. The petitioner also asserts that the beneficiary possesses specialized knowledge of the petitioning organization's "Onsite/Offshore Methodology" as well as of the "proprietary technologies" used to implement the petitioning organization's projects, including eTracker, Qsmart, eMetrics, eCockpit and Prolite. The petitioner alleges that the beneficiary's knowledge was acquired through formal training, development of domain knowledge in the banking and financial sector, and working on the FDFIS Application Management project since its inception. The petitioner asserts that the beneficiary is one of just a "handful of professionals" who possesses such qualifications within his occupation.

Despite these assertions, the record does not establish how, exactly, the beneficiary's knowledge of the FDFIS project or the petitioning organization's "proprietary technologies" is so materially different from software development and implementation projects in general that a similarly experienced and educated software professional employed by the petitioning organization or in the industry at large could not perform the duties of the position. The petitioner never establishes what specific knowledge of the FDFIS Project or the petitioning organization's "proprietary technologies" could not be readily conveyed to a similarly trained and experienced software professional. In fact, the petitioner fails to specifically define what "extensive training" would need to be provided to a new developer assigned to the project. Nor has the petitioner provided any evidence to indicate that other programmer analysts within the petitioner's organization do not possess similar knowledge, which they may have gained through training similar to that made available to the beneficiary. 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)).

This failure on the part of the petitioner to quantify the amount or type of training and experience needed to acquire the claimed specialized knowledge is compounded by the petitioner's failure to provide a consistent account of the beneficiary's employment history and project experience with the company. The petitioner indicated at the time of filing the petition that the beneficiary was assigned to the FDFIS Application Management project in July 2008, and the beneficiary's resume confirms July 28, 2008 as his start date at First Data's facilities. In response to the RFE, the petitioner claimed that the beneficiary has been assigned to the FDFIS Application Management project since his transfer to the United States in November 2006. The beneficiary indicates in his resume that he worked on the Indymac Maintenance Support project in Pune, India and Pasadena, California between January 22, 2005 and July 25, 2008. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Given that the beneficiary's training records indicate that he began 150 hours of training in First Data Applications beginning on August 4, 2009, it is reasonable to believe that his actual date of assignment to the FDFIS Application Management project was in fact on July 28, 2009 as stated in his resume. The petition was filed on January 30, 2009, only six months later, and approximately four months after the beneficiary completed his training in the client's applications.

While the AAO does not dispute that the time the beneficiary spent working with the client allowed the beneficiary to become familiar with the client's internal systems, requirements and processes, the petitioner has failed to demonstrate that the beneficiary possesses, or that his duties require, any special or advanced body of knowledge that is specific to the petitioning company and that is not commonly possessed by others within the petitioning entity. As previously noted, 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 record is not persuasive in establishing that the 475 hours of "formal training" provided to the beneficiary has imparted specialized knowledge to the beneficiary. Much of the training regimen outlined by the petitioner does not appear to relate specifically to the beneficiary's purported specialized knowledge. Only one course, a 4-hour course pertaining to eTracker, appears to directly concern one of the "proprietary technologies" listed in the training outline. The beneficiary has taken only one course that is directly related to the FDFIS Application Management project, specifically, a 150-hour course in the client's internal applications. While this knowledge is undoubtedly required for those assigned to the project, knowledge of the unrelated client's applications cannot be considered specialized knowledge that is specific to the petitioning organization.

The beneficiary's remaining training regimen appears to concern general topics relating to widely used software and courses in the banking, credit card and financial services sector. Training in such areas is widely available in the petitioner's industry and also cannot be considered exclusive to the petitioning organization. Furthermore, much of this training was provided as part of an "entry level training program" that is likely provided to all new hires. Absent evidence establishing that the knowledge imparted by the training sessions is not possessed by other similarly employed workers, knowledge of these subjects would not be specialized. The petitioner declined to identify how many similarly employed workers are assigned to the FDFIS Application Management project. Based on the evidence submitted, it appears unlikely that the beneficiary's knowledge or training regimen conveyed knowledge that is advanced within the petitioning organization, or significantly different from that possessed by software consultants working in the banking and financial services sector.³

The petitioner and counsel argue that the beneficiary's familiarity with the client project should be considered knowledge that is specific to the petitioner's interests and therefore "specialized." There are several flaws in counsel's argument. First, the petitioner has not identified with any specificity the aspects of the FDFIS Application Management project that would distinguish it from any other software implementation project carried out by the petitioner's banking and financial services group or other software companies offering services in this sector. The beneficiary's duties performed for the FDFIS Application Project do not appear to be demonstrably different from those he performed for a different client. We acknowledge that any client project undertaken by

³While neither the Act nor the regulations mandate a certain amount of training for imparted knowledge to be "specialized," it must be noted that, even if the knowledge imparted to the beneficiary during his training sessions related primarily to his purported "specialized knowledge" (which it did not), the beneficiary's receipt of 475 hours of training spread out over four years of employment will not alone establish that the training sessions imparted "specialized knowledge."

the petitioning company or any other technology consulting company, is unique in that it reflects the particular technological needs and business requirements of the individual client requesting the consulting services. USCIS cannot, however, find that an employee's knowledge of a client project, and the relationships established through working on such a project, without more, are sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any information technology consultant in possession of project experience.

The beneficiary's familiarity with the client's systems and project requirements, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that he possesses specialized knowledge. All information technology consultants within the petitioning organization would reasonably be familiar with its internal processes and methodologies for carrying out client projects and also be familiar with the resources assigned to projects on which they have worked. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients. The fact that the beneficiary possesses very specific experience with a particular international client's project does not establish that the beneficiary's knowledge is indeed special or advanced if the same could be said about the majority of the petitioner's workforce.

In addition, even assuming *arguendo* that the beneficiary's familiarity with the client's systems or products, or more generally, his experience with a specific project, could be considered "specialized knowledge," relative to the petitioner, it is unclear how the beneficiary, who has worked on the FDFIS Application Management project for only six months, and spent nearly two of those months in training, is considered to have "advanced" knowledge of the petitioner's processes and methodologies relative to the client or the project. As noted above, the petitioner has asserted that the beneficiary has been working on the project since its inception, however, the petitioner has claimed two entirely different dates with respect to the beneficiary's period of assignment to this project. The petitioner has not provided a statement of work or other evidence of the start date for the project to clarify this discrepancy. Further, the petitioner has not provided sufficient details regarding the specific project that would distinguish the beneficiary's role from those performed by any other systems analysts. Although such information was requested by the director, the petitioner has not identified how the skills needed to perform the proposed job duties would require specialized knowledge relative to either the petitioning company or the project. 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). The AAO notes that the petitioner's relationship with the client, First Data Resources, dates back to 1998 when the Master Development Agreement was signed. Therefore, an employee who has worked on a single First Data project for a period of six months may not be considered to possess advanced knowledge of the petitioner's processes as they relate to project implementation for this particular client.

Again, 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 and explain how and when the beneficiary gained such knowledge. Merely stating that he will continue working on the same client project is not sufficient to satisfy the petitioner's burden of proof.

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 the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to one component of a specific client project, or the same level of knowledge of a client's own internal products, services or processes is not enough to establish the beneficiary as an employee possessing specialized knowledge.

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, (i.e., one of only two systems analyst specialists assigned to a specific project team) will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it would include the majority of its workforce. Here, the petitioner essentially states that it considers all employees with experience on a specific client project to have specialized or advanced knowledge of that project. Given that the petitioner is a consulting company, most of its technical staff would meet the company's definition of a specialized knowledge worker. The fact that other workers outside of the petitioning organization may not have very specific knowledge of client projects and the personnel assigned to them is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the details of the project to a similarly experienced software consultant with the applicable technical and functional expertise in .Net technologies and the banking and financial services sector.

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

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during his two years of employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced relative to a specific client project are unpersuasive. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's tools and processes for implementing projects. By the petitioner's logic, any of them would qualify for L-1B classification if offered a position working on the same project in the United States.

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."⁴ An expansive interpretation of specialized knowledge in which any experienced employee would qualify as having special or advanced knowledge would be contrary to Congressional intent, since it would allow a petitioner to transfer any experienced employee to the United States in L-1B classification. The term "special" or "advanced" must mean more than experienced or skilled. In other terms, specialized knowledge requires more than a short period of experience, otherwise, "special" or "advanced" knowledge would include every employee with the exception of trainees and recent recruits.

The AAO does not dispute the possibility that the beneficiary is a skilled employee who has been, and would be, a valuable asset to the petitioner. As explained above, however, 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 is common among consultants specializing in computer software and related technologies. It is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. 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 for planning, monitoring and implementing project tasks are substantially different from those used by other technology consulting companies. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

⁴ 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).

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.

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.

V. Prior Approval and Conclusion

The AAO acknowledges that the beneficiary was previously approved for an L-1B visa pursuant to the petitioner's Blanket L petition. The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that a visa petition was approved on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference.

Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position requiring specialized knowledge. If the previous petition was approved based on the same or similar evidence as contained in the current record, the approval would constitute gross error on the part of the consular officer who reviewed the beneficiary's application under the Blanket L program. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. The AAO finds that the director was justified in departing from the prior approval and denying the instant request for an extension of the beneficiary's status.

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.