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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



157

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 status 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 New Jersey-based information technology company, claims to be a subsidiary of the beneficiary's foreign employer, [REDACTED], located in India. The beneficiary was granted L-1B classification for a two-year period in February 2007 and the petitioner now seeks to extend his status for an additional 18 months so that he can continue to serve in the position of CTT Specialist.<sup>1</sup>

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 the denial of this petition "is a reversal of a prior decision without providing any evidence as to why the prior decision was obviously erroneous or what new factors or new material information there is that would cast doubt on the first decision." Counsel contends that the decision is contrary to USCIS policy guidance on the re-adjudication of extension petitions.

## **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

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<sup>1</sup> The beneficiary is described elsewhere in the record as a [REDACTED] and [REDACTED]

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).

## II. Specialized Knowledge

The sole issue 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 November 3, 2008. In a letter dated October 22, 2008, the petitioner indicated that it is a "comprehensive software consulting company" providing services such as "long-term/short-term on-site/off-site software developing services including "application migration over architecture and operating systems, developing turnkey projects, marketing and support of leading edge software solutions, etc." The petitioner described the beneficiary's experience and qualifications as follows:

[The beneficiary] was initially transferred to [the petitioning company] in March 2007 to serve as a Specialist Software Engineer working on the Cummins Turbo Technologies ("CIT") [*sic*] projects for the EBU (Engine Business Unit). In this capacity, his primary responsibilities have been to analyze the project's business requirements, develop, test, debug, modify and enhance the software, assist in the design and development of proposals, project plans and delivery schedules, coordinate with the off-shore team and on-site components of the team; provide design and technical support to the team; provide liaison with client and execute delivery. During most of his entire employment with us, he has worked on various Cummins Turbo Technology projects (i.e. CTT Stores System, CTT Scheduler System and CTT External Request System), prior to his transfer and upon his transfer. In fact he has worked mostly on Product Life Cycle Management (PLM). He also has extensive experience with [REDACTED] [*sic*] platform, on which most of these applications are based[.] His activities had been to provide support for the project, debug, modify, enhance and deliver the modules. Lately, his duties have evolved to also provide liaison and coordination with the on-site team as well as lead technical staff. In this connection, he has managed the team and the process and effectuated delivery in compliance with SEI CMM Level 4. . . .

[The beneficiary] has a Bachelor of Science degree in 1997 from Amravati University, India and a Bachelor of Science (Technology) degree in 2004 from the University of Mumbai, India. Since commencing employment with [the foreign entity] he has worked on the activities as described above as well as on compliance with SEI CMM level 4. Thus, he has the required and necessary specialized and advanced knowledge of the projects [REDACTED] and their management and the technologies required for the position at [REDACTED] in the US as an employee of [the petitioner]. He is being transferred because of this specialized and advanced knowledge of the projects, that he is going to be involved in the development, execution and coordination.

The petitioner submitted a copy of the beneficiary's resume, in which the beneficiary describes his "experience in Information Technology, mainly on Product Lifecycle Management (PLM) systems, specifically [REDACTED]" The beneficiary indicates that his specific software skills include: eMatrix (Core, MQL, ADK, AEF, JPO, Info Central), Java, Servlets, JSP, Struts 1.1, Java Script, PL SQL, Oracle 9I, Apache Tomcat, ASP, and Fox Pro.

According to the beneficiary's resume, he has worked on three projects for [REDACTED] since joining the foreign entity in August 2005. He indicates that he is currently the [REDACTED] for [REDACTED] in which he serves as both configuration manager and [REDACTED] onsite support coordinator. As configuration manager, the beneficiary is responsible for defining configuration management processes for [REDACTED] releases, maintaining code in clearcase and coordinating release cycles, and creating baselines. As the [REDACTED] onsite support coordinator, the beneficiary interacts with users for day to day application issues, analyzes issues reported by users and provides solutions, coordinates with an offshore team, and performs requirement gathering functions.

The director issued a request for additional evidence ("RFE") on February 6, 2009. The director instructed the petitioner to submit, *inter alia*, the following evidence: (1) an explanation regarding how the duties the beneficiary performed abroad and those he will perform in the United States are special, advanced or otherwise different from those of other workers employed by the petitioner or other U.S. employers in similar positions; (2) a detailed explanation regarding exactly what is the equipment, system, product, technique or service of which the beneficiary has specialized knowledge; (3) an explanation as to how the beneficiary's training compares to that of others employed by the petitioner or by others working in his field; and (4) a statement from the petitioner's client(s) commenting on the beneficiary's individual contribution to the project(s) to which he is assigned.

In a letter dated February 25, 2009, the petitioner reiterated the position description provided at the time of filing, emphasizing that the beneficiary "is currently working on projects for [REDACTED]. The petitioner noted that [REDACTED] accounts for a substantial portion (approximately one-third) of our world wide revenues," and that it has "a large amount of resources committed to [REDACTED]" which is claimed to be "a part owner and thus an affiliated company." The petitioner further indicated that most of its L-1B employees in the United States work on [REDACTED] projects, and that "a major portion of our business is being an in-house IT shop for [REDACTED]." The petitioner stated that "the beneficiary was initially transferred because of his having worked on the projects for [REDACTED] that we need for him to continue to work on."

With respect to the beneficiary's qualifications as an employee with specialized knowledge, the petitioner stated:

[The beneficiary's] specialized and advanced knowledge derives from his having worked on the above and previously detailed family of projects for over one year, which he has continued to work on and he will continue to work on for [REDACTED], an affiliated company. It would be practically infeasible, time consuming and economically detrimental to hire locally for this project in the USA. In other words, [the beneficiary] is the most appropriate, efficient and economically beneficial resource for this project. [The beneficiary] has a Bachelor of Science degree from Amravati University, India and a Bachelor in Electrical engineering and over 3 years experience in the occupation. He is clearly a professional.

Counsel emphasized that the beneficiary's specialized knowledge "derives from having worked on the projects that he was transferred to continue to work on" and that the current request is to extend the beneficiary's stay in L-1B status to continue working on the same [REDACTED] projects. Counsel indicated that "there has not been any material change from the date of the filing of the initial L-1B to now."

The director denied the petition on April 1, 2009, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director concluded that "[t]he duties performed with the foreign entity and to be performed at the work site, as simply stated, appear to be essentially that of a skilled worker." The director further found that "[t]he beneficiary's duties and skills as a CTT Specialist while impressive, demonstrate knowledge that is common among programmers employed by the foreign entity, your workforce at your location and others in the field of information technology." The director emphasized that the petitioner had failed to demonstrate that the beneficiary's duties involved knowledge of the petitioner's product, tools, processes or procedures.

On appeal, counsel asserts that the petitioner has explained that the beneficiary possesses specialized knowledge, in that he possesses knowledge which can be gained only through prior experience with the petitioner's organization, and possesses knowledge of a product or process which cannot be easily transferred or taught to another individual. Counsel further contends that "the Service Center has previously accepted that this job required specialized and advanced knowledge and that this beneficiary possesses this required knowledge by approving [the petitioner's] prior L-1B on [the beneficiary's] behalf."

Counsel further contends that "it would be contrary to the tenets of clarity, consistency and transparency for the USCIS to adjudicate that [the beneficiary's] job duties required his specialized and advanced knowledge in January 2007 . . . when the USCIS approved [the petitioner's] first L-1B on his behalf, and now to say that his job duties do not!" Counsel emphasizes that the director's decision failed to provide any analysis "stating what is different now from before," and is thus "contrary to its own policy as articulated by AILA."<sup>2</sup>

The petitioner also submits a letter dated April 30, 2009 in support of the appeal. The petitioner asserts:

We execute several projects for [REDACTED] with resources that are on-site as well as off-site/off-shore. [REDACTED] accounts for approximately 55% of [REDACTED]'s worldwide gross revenues. We have approximately 4,700 employees world wide of whom approximately 100 are in the U.S. in L status (i.e. approximately 2%). We transfer some of these off-site resources to continue to work on projects that they have been working on for a year or more. We do that since it is economically sensible to do so. If we pick someone locally, to train him, it would be impractical, time consuming and very expensive to send him overseas for the training. Very often it is not feasible. To provide him on the job training in the US would be unfeasible. If at all doable, it would be impractical, time consuming and very expensive. [The beneficiary] is one such employee.

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<sup>2</sup> Counsel cited to an *AILA Infonet* article titled "VSC Practice Pointer: Re-adjudication of Eligibility of L-1B Specialized Knowledge Cases on Extension" [REDACTED] (posted Feb. 23, 2009)), and provided a copy of the article.

The petitioner reiterates the position description provided in its initial letter of support and emphasizes that USCIS previously granted the beneficiary L-1B classification for the same position. The petitioner, like counsel, states that the director has "neither articulated any obvious error in the previously approved petition, nor identified any new factors or new material information since the approval of the prior petition."

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.

#### *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).<sup>3</sup>

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

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<sup>3</sup> Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. See *1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. See generally H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, *id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3<sup>rd</sup> 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, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

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

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

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

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

#### *Analysis*

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "specialized" 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 the approval of the prior L-1B submitted on the beneficiary's behalf. 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 USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'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.

The AAO notes that the petitioner has made references to documentation or information submitted in support of the beneficiary's prior L-1B petition. 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). If a director requests additional evidence that the petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the records of the separate nonimmigrant proceedings are not combined. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides that the director may request supporting documentation in an L-1 extension proceeding and does not require that the director articulate any defect with the prior approval, change in circumstances, or new material information in doing so. Further, in any L-1 petition proceeding, the petitioner may be asked to submit "such other evidence as the director, in his or her discretion, may deem necessary." 8 C.F.R. § 214.2(l)(3)(vii).

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. As discussed herein, the AAO concurs with this conclusion, based in part on the petitioner's failure to provide a meaningful response to several of the queries raised in the RFE. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand.

Further, if the previous petition was approved based on the same minimal evidence of the beneficiary's eligibility as contained in the current record, the approval would constitute gross error on the part of the director. 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. Neither the director nor the AAO is required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). Accordingly, 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 examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to

establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

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 any basis to support this claim. The petitioner has provided a general description of the beneficiary's past and present duties, but the description does not mention the application of any special or advanced body of knowledge specific to the petitioning organization which would distinguish the beneficiary's role from that of other similarly-experienced IT specialists employed by the petitioner or the information technology field at large. The evidence of record indicates that the beneficiary enhances and supports applications developed on [REDACTED] using experience with Java, eMatrix, JSP and clearcase. A review of the beneficiary's resume reflects that the beneficiary possessed experience in all of these areas at the time he was hired by the foreign entity. It is evident that other information technology consultants working for other companies possess a similar skill set.

The petitioner claims that the beneficiary's specialized knowledge was derived from his nearly two years of experience with the petitioner's parent company and working on several projects for [REDACTED] that are claimed to be similar to the project(s) to which he has been and will be assigned in the United States. The beneficiary's project experience forms the sole basis of the petitioner's claim that he possesses specialized knowledge. However, the petitioner does not explain how the beneficiary's specialized knowledge derives from any company-specific methods or procedures for software or systems development or project management. Therefore, the petitioner has offered little more than conclusory assertions in support of its claim that the beneficiary possesses 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 failed to articulate, with specificity, the nature of the claimed specialized knowledge.

While the beneficiary's resume confirms that he has worked on several [REDACTED] for the petitioner's client [REDACTED], it does not establish how the knowledge he used or acquired on such projects rises to the level of specialized or advanced knowledge, or why such duties could not have been performed by any experienced consultant with [REDACTED] experience.

The petitioner does suggest that the beneficiary's knowledge should be considered specific to or proprietary to the petitioning company because [REDACTED] is "affiliated to" the petitioner and its parent company, and is not a mere client. The petitioner's claim that it is an affiliate of [REDACTED] is not corroborated by any documentary evidence of the purported corporate relationship. The petitioner merely states that [REDACTED] is a part-owner of its parent company. However, according to the petitioner's annual report for 2007-2008, [REDACTED] owned 14.76% percent of the shares of the petitioner's parent company. This does not establish an affiliate relationship as that term is defined for the purposes of this nonimmigrant visa

classification (*see* 8 C.F.R. 214.2(I)(1)(ii)(L)), nor does this level of common ownership create a situation in which products that are proprietary to [REDACTED], would also be deemed proprietary to the petitioner or its parent company. It is evident that [REDACTED] does outsource many information technology functions to the petitioner and its parent company and that the petitioner's employees thereby have access to [REDACTED] proprietary product and systems information. However, such knowledge cannot be considered specific to the petitioning company, and knowledge of such products or systems cannot be considered "specialized knowledge" of the petitioner's products, systems or other interests.

Thus, while counsel argues that the beneficiary's familiarity with the client's products and systems should be considered knowledge that is specific to the petitioner's interests and therefore "specialized," the AAO notes that such an interpretation would essentially open the classification to any information technology consultant who worked on any client project with on-site and off-shore components for at least one year. Again, the beneficiary's familiarity with [REDACTED]'s projects, systems, or procedures, 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. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients. In fact, the petitioner emphasizes that more than half of the company's revenues worldwide are derived from [REDACTED] projects and that the petitioner and its parent company devote substantial human resources to [REDACTED]. 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.

In addition, even assuming *arguendo* that the beneficiary's familiarity with the client's systems or products could be considered "specialized knowledge," relative to the petitioner, it is unclear how the beneficiary, who worked on [REDACTED] for less than two years at the time of his transfer to the United States, is considered to have "advanced" knowledge of the petitioner's processes and methodologies relative to [REDACTED]. The petitioner has not provided any details regarding the specific project that would distinguish the beneficiary's role from those performed by any other [REDACTED]. The petitioner has not identified how the skills needed to perform these duties would require specialized knowledge relative to either the petitioning company or the project. 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.

The petitioner has repeatedly stated that it would be "impractical, time consuming, and very expensive" to train an employee to perform the beneficiary's duties, and indicated that only a person with at least one year of relevant project experience could perform the proposed duties. Although the petitioner suggests that this knowledge can be acquired only through at least one year of training and experience with the petitioner's organization, the petitioner has not indicated that the beneficiary himself received any specific formal or on-the-job training upon joining the company in either the petitioner's internal processes and procedures or in the subject matter related to his project assignments. Despite his lack of company-specific training or experience, the beneficiary was hired by KPIT-India and immediately assigned as a developer on a [REDACTED].

performing the same duties that he performed up to the time of his transfer to the United States.

This fact directly undermines the petitioner's claims. It is apparent that the beneficiary did not have one year of experience prior to his overseas assignment to as a member of a [REDACTED] project team. The minimal evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's processes and methodologies.

The petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it cannot be concluded that its 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 information technology consultant who had no prior experience with the petitioner's family of companies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). Further, since it appears the beneficiary was able to assume such a role on the [REDACTED] project 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 undergraduate education or through previous experience. The beneficiary has approximately two years of experience as a software engineer, consultant and consultant programmer prior to joining the foreign entity, during which time he utilized skills such as Java, JSP, Servlets, SQL Server, and eMatrix 10.5 (MQL, ADK, AEF).

Based on the evidence submitted, the petitioner's internal processes and tools, while effective and valuable to the petitioner, can be readily learned on-the-job by employees who otherwise possess the requisite technical background in the information technology field. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitutes specialized knowledge.

All employees can be said to possess unique skills or experience to some degree. Moreover, any proprietary qualities of the petitioner's processes 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 proprietary products or systems, 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 [REDACTED] assigned to a small 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 one year of experience on a specific project to have specialized or advanced knowledge, and it concedes that a large portion of its workforce has experience with [REDACTED].

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 record does not reveal the material difference between the beneficiary's knowledge and the knowledge possessed by similarly experienced [REDACTED] in the petitioner's industry or in the petitioner's own organization. Without producing evidence that the petitioner's consulting services are different in some material way from similar services offered on the market by similarly experienced software professionals, the petitioner cannot establish that the beneficiary's knowledge is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by similarly experienced personnel engaged within the beneficiary's field of endeavor. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

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

The AAO does not dispute 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

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<sup>4</sup> As observed above, the AAO notes that the precedent decisions that predate the 1990 Act are not categorically superseded by the statutory definition of specialized knowledge, and the general issues and case facts themselves remain cogent as examples of how the INS applied the law to the real world facts of individual adjudications. USCIS must distinguish between skilled workers and specialized knowledge workers when making a determination on an L-1B visa petition. The distinction between skilled and specialized workers has been a recurring issue in the L-1B program and is discussed at length in the INS precedent decisions, including *Matter of Penner*. See 18 I&N Dec. at 50-53. (discussing the legislative history and prior precedents as they relate to the distinction between skilled and specialized knowledge workers).

knowledge 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 professionals in his field. Furthermore, 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 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.

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.

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.