



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 12 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

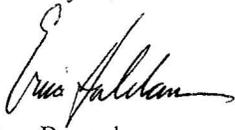
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California limited liability company, states that it engages in a food service business. The petitioner claims to be an affiliate of [REDACTED] located in the Philippines. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as "VP of Marketing and Research and Development," for an initial period of two years.¹

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the decision was erroneous based on the facts and evidence submitted. The petitioner submits a letter and additional evidence in support of the appeal.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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.

¹ The AAO notes that the Form I-129 indicates that the beneficiary will be employed in a new office in the United States. As such, the beneficiary's initial period of approval would be limited to one year. *See* 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

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

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

The regulation at 8 C.F.R. § 214.2(l)(3) 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.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires specialized knowledge.

A. Facts

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it engages in a food service business with four current employees. The Form I-129 indicates that the petitioner will employ the beneficiary as "VP of Marketing and Research and Development." In support of the petition, the petitioner submitted a letter describing the beneficiary's proposed duties as follows:

As VP of Marketing and Research and Development, he will be in charge of the following duties and responsibilities:

Direct and participate in the food preparation process using [the petitioner's] unique recipes and food preparation techniques;

Plan and Implement employee training on food preparation using [the petitioner's] unique recipes, cooking techniques, food quality and sanitary standards;

Monitor food preparation, food quality and taste integrity;

Ensure overall consistency of taste and quality of food products;

Research availability, price and quality of local raw materials to be used in food preparation and conduct food testing to evaluate raw materials to be used in preparing [the petitioner's] unique food recipes;

Develop and/or revise [the petitioner's] food recipes to adapt to local tastes using available local ingredients but at the same time maintaining [the petitioner's] taste, quality and healthy standards;

Assist in developing the correct menu offerings based on market trends, customer preferences and nutritional considerations.

Promote [the petitioner's] food products as synonymous to healthy and tasty Philippine cuisine.

Develop marketing strategies to reach the broadest consumer base including creating and designing the website for the U.S. operations, designing flyers and representing the company in media and all public relations events.

The petitioner's letter went on to describe the specialized knowledge required to perform the proposed duties at the U.S. company:

To perform the duties above-described, beneficiary must have intimate knowledge of the food recipes and food preparation techniques that constitute the company's trade secrets. Most of these recipes have been in the [redacted] family for generations and some of the food recipes have been created by beneficiary, beneficiary's mother and father. Having intimate knowledge of the family food recipes and their preparation techniques, beneficiary is an ideal candidate to perform the above-described responsibilities for the [petitioner]. Moreover, the raw products utilized in the recipes, the taste and quality of the food products are unique to [the foreign entity] and [the petitioner]. It is also essential for [the foreign entity] and [the petitioner] to offer consistency in taste and quality of our food products. The responsibility of ensuring consistency of taste and quality in the preparation of our food products and the marketing of the same as a healthy and tasty alternative to existing market food products would require extensive and intimate knowledge of [the foreign entity's] food products.

The knowledge of the preparation of [the petitioner's] food products is a family secret and is unique to the core personnel of [the foreign entity] who are entrusted with the secret food recipes and food preparation. These key personnel entrusted with the family secret recipes

are limited to the [REDACTED] family (beneficiary being one of them) and a select number of trusted employees.

The petitioner's letter also described the beneficiary's specialized knowledge and foreign employment as follows:

Of the [REDACTED] children, it was beneficiary who early on showed the same love and passion for cooking and good food as his parents. Growing up, beneficiary was an enthusiastic assistant to his parents and shared their interest in creating delicious dishes for the entire family to enjoy. When the family decided to open their first restaurant in Quezon City, Philippines, the initial food recipes were created with beneficiary's input. Beneficiary together with his parents worked long periods of time testing, retesting, revising food recipes to come up with the perfect taste for the food products that are currently offered in all [of the foreign entity's] branches and franchises. Some of these food products currently offered were solely created by beneficiary.

The petitioner submitted the beneficiary's resume listing his diploma in digital film and television, major in directing and screen writing, along with awards and achievements in producing, directing, screen writing, and promoting films. The resume does not list any internal training relating to the petitioner's product or the food industry in general. The resume describes the beneficiary's work experience at the related foreign entity as follows:

July 2004 to present

Research & Development Department (July 2004-April 2008)

Responsible for food preparation and creating and testing new food recipes to be sold exclusively at the [foreign entity's] branches and franchises. Research availability, price and quality of raw materials. Monitor food preparation, food quality and taste integrity. Ensure overall consistency of taste and quality of food products sold.

Marketing Director (July 2004-April 2008)

Overall responsibility for the company's marketing plans and strategies. Create and implement quarterly marketing plan for TV, radio & print. Conducting surveys for new products and handled public relations for franchise owners.

VP of Marketing and Research and Development (April 2008-present)

Direct and participate in the food preparation process using [the company's] unique recipes; plan and implement employee training on food preparation using [the company's] unique recipes, food quality and sanitary standards; monitor food preparation, food quality and taste integrity; ensure overall consistency of taste and quality of food products; research availability, price and quality of local raw materials to be used in food preparation and conduct food testing to evaluate raw materials to be used in preparing [the company's] unique food recipes; promote the food product as synonymous to healthy and tasty Philippine cuisine; develop marketing strategies to reach the broadest consumer base; conduct surveys for new products and handled public relationship for the branch and franchises.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, the following: (1) evidence that the beneficiary possesses specialized knowledge; (2) evidence that the beneficiary has been employed abroad by a qualifying organization in a position that was managerial or executive or involved specialized knowledge; and (3) evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner described the beneficiary's specialized knowledge as follows:

Beneficiary is one of the creators and developers of the formulas and ingredients of our food recipes. As a member for the [REDACTED] family he is also entrusted with the secret family recipes as well as food preparation techniques of all food products sold by our organization.

The food service industry in the Philippines is highly competitive. Filipinos wherever they are love to eat and show a preference for consuming native Filipino dishes. When it comes to native Filipino dishes to which they have been exposed to their entire lives, the Filipino palette is extremely discriminating. The success of any food business venture in the Philippines offering Filipino cuisine ultimately comes down to authentic Filipino taste.

To be able to create delicious, mouth watering food products that practically everyone who craves authentic Filipino food would want, requires specific knowledge and a profound understanding of the Filipino palette, the discernment to recognize the specific and unique taste that Filipinos would appreciate and the talent and ability to develop and create the food products with that unique and authentic Filipino taste.

Beneficiary was chosen by the family to head the Research and Development and Marketing Department because of the siblings, he demonstrated a gift or talent for creating and developing food recipes. In the early days of our operation, beneficiary manifested an intuitive understanding of the Filipino palette and tastes in food, what consumers like, what they dislike and what they would buy over and over again. This knowledge and understanding of the Filipino food preferences have been honed in the many years that beneficiary has been with the organization.

As further explanation of the beneficiary's claimed specialized knowledge and the ability to impart the knowledge to others, the petitioner emphasized that it opened its first restaurant in the United States in early 2012 and does not have any workers who possess the beneficiary's knowledge of the company's recipes. The petitioner further clarified its need for the beneficiary's services and his expected contribution:

Having created or helped create practically all of the food products we offer to our U.S. customers, beneficiary is the perfect individual to ensure that the goals of our company in terms of quality, uniformity and taste integrity of our food products are met. Our food products are prepared in the United States using raw materials or ingredients that are locally available. In layman's terms, beneficiary will ensure that the taste, appearance and presentation of all of our food products sold in the United States is consistent with those sold in the Philippines.

Moreover, there are certain ingredients that may not be available or too expensive in the United States to use. Beneficiary is the best person to find replacement raw materials and to ensure that the taste is identical if not similar to our original food products.

With respect to the beneficiary's role in marketing and promotion activities, the petitioner emphasized that, as a family business, "it is critical that we have a member of the [REDACTED] family to represent the face of the company. Beneficiary is tasked with promoting the company." In response to the RFE, the petitioner provided the same exact description of the beneficiary's proposed duties in the United States as previously provided, and added:

Beneficiary will be responsible for directing food preparation using and applying his proprietary, unique and specialized knowledge of the secret ingredients/formulas that he helped create and developed. In monitoring the food preparation, food quality and integrity will involve food tasting for beneficiary to determine that the food products served and sold in the United States tastes are consistent with those offered in the Philippines.

The petitioner also provided the same exact description of the beneficiary's duties at the foreign entity and added the following about the involvement of specialized knowledge in said position:

We provide a summary of food dishes that have been created and developed specifically for our organization and the names of individuals responsible for creating and developing these good recipes. . . . As shown by this summary, beneficiary created and developed many of the food products that we now offer to our customers.

Beneficiary has specialized knowledge of the food recipes and food preparation involved in our food products which is not possess [sic] and not made available to anybody else other than key members of the organization who are all members of the [REDACTED] family. Other than beneficiary and his parents, the formulas for the food recipes used in all the outlets, branches and franchises are only known to beneficiary, his parents and siblings. These formulas/ingredients are prepared in our commissary located in Quezon City, Philippines. The formulas for our different food products are "premixed" and a [REDACTED] family member is always present to direct the mixing process. Thus, while the organization have [sic] workers with knowledge of the ingredients, no one employee outside of the [REDACTED] family has been entrusted with the complete formulas of our food products. These pre-mix formulas are then brought by our branch mixers to their assigned locations where they are then prepared onsite.

The petitioner submitted a listing of recipes developed from 2001 to the present indicating that the beneficiary was co-creator of six recipes and sole creator of fifteen recipes, twelve of which were created for the U.S. market in 2012.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a capacity requiring specialized knowledge. In denying the petition, the director found that, based on the evidence submitted, it cannot be concluded that the beneficiary, as a result of his education, training,

and employment with the foreign entity, has knowledge or experience in the field of food preparation that is significantly different from that possessed by similarly employed workers in the same industry. The director found that the petitioner failed to demonstrate that knowledge of its organization's processes is specialized knowledge. The director further observed that the petitioner failed to submit any evidence to show that the beneficiary's specialized knowledge was gained through specific training from its organization or how such training established a "special" or "advanced" level of knowledge of its restaurant processes, recipes, and food preparations when compared to other employees of its organization or other workers in a similar position in the field. The director further found that the beneficiary's position abroad was not managerial or executive in nature.

In denying the petition, the director also observed that the duties to be performed and knowledge required for the beneficiary's proposed position in the United States are the same provided for his foreign position, which was not found to involve specialized knowledge. The director found that there is no evidence on record to suggest that the processes pertaining to the petitioner's organization are different from those applied by any VP of Marketing and Research and Development or similar position working in the same industry. The director further found that a mere assertion that the beneficiary possesses knowledge of the petitioner's products, processes, procedures, and policies does not amount to specialized knowledge. The director emphasized that while individual companies will develop processes, procedures, and policies tailored to their own needs, it has not been established that similarly employed persons in the field could not readily acquire such company-specific knowledge.

On appeal, the petitioner contends that the service made an error in comparing the beneficiary's position to a typical VP of Marketing and Research and Development. The petitioner asserts that it provided sufficient evidence to establish that the beneficiary possesses specialized knowledge, and that the beneficiary's position abroad and proposed position in the United States require specialized knowledge.

In support of the appeal, the petitioner submits a letter emphasizing that its products and corresponding recipes are trade secrets that are not shared outside of the [REDACTED] family (and a few trusted workers). The petitioner reiterates the importance of the beneficiary's presence at the U.S. company in keeping its products uniform and recipes safe as they expand in the United States. The petitioner asserts that the director's denial "borders on the discriminatory" as it appears that USCIS "views the preparation of food products, even designing a menu and creating food products, to be too simple as not to rise to the level of 'specialized knowledge.'" Further, the petitioner contends that the beneficiary possesses the characteristics of a specialized knowledge employee as discussed in a 1994 legacy Immigration and Naturalization Services (INS, now USCIS) memorandum.²

B. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position that requires specialized knowledge.

² Memorandum from James A. Puleo, Assoc. Comm., INS, *Interpretation of Specialized Knowledge*, March 4, 1994. (hereinafter "Puleo memorandum");

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on both prongs of the statutory definition. Specifically, the petitioner asserts that the beneficiary has special knowledge of proprietary family recipes and an advanced level of knowledge of the company's processes and procedures.

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized knowledge, 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.*

In the instant matter, the petitioner has not shown that the beneficiary possesses knowledge that is specialized or advanced. The beneficiary was employed by the foreign entity for ten years at the time of filing the petition and he spent the previous four years performing essentially the same duties as those he will perform in the United States. The petitioner indicates that the beneficiary's knowledge of Filipino culture and tastes, along with his knowledge of the family recipes and cooking processes, distinguishes his knowledge from that possessed by other employees at the company and in the industry. However, any individual who works in the same industry with Filipino customers, or who resided in Philippines, would reasonably understand the Filipino culture and taste preferences. The petitioner has not demonstrated how this knowledge sets the beneficiary apart from any other individual in the same or similar position within the company or the industry.

The petitioner further claims that the beneficiary's knowledge of its family recipes and cooking processes rises to an advanced level of knowledge. The record does not support this claim.

The petitioner indicated that the beneficiary personally created 15 recipes for the petitioner and foreign entity. As a result, the petitioner claims that the beneficiary possesses specialized or advanced knowledge of the company's "trade secrets." However, the petitioner has not provided any clear descriptions of the beneficiary's role in the creation of the recipes in order to establish that the beneficiary acquired specialized knowledge through his work as a VP of Marketing and Research and Development at the foreign entity, other than an internally-prepared list of dishes with a creator's name attached to each dish. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the petitioner states that the beneficiary will be the sole employee in the United States in the specialized knowledge position. The petitioner indicated that the beneficiary possesses a unique combination of academics and work experience that qualify him for the specialized knowledge position in the United States. However, the petitioner has not provided any evidence or other information relating to the beneficiary's education or training at all. Based on the limited information provided, the record reflects that the beneficiary received a diploma in digital film and television and has been employed at the foreign entity since the age of 19, with no documented academic or employment qualifications for the position. In fact, the petitioner has not demonstrated that the beneficiary has received any kind of training in the food preparation or food service industry. This failure of documentation is important because the evidence does not demonstrate that the beneficiary possesses education, training, or experience that rises to the level of having acquired specialized or advanced knowledge. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the record, the petitioner contends that the beneficiary worked for the foreign employer for 10 years, currently as a VP of Marketing and Research and Development, and developed 15 new recipes, but it has not provided a detailed description of his duties or roles within the development of such recipes. The petitioner claims that its recipes are kept within the family and are considered "trade secrets;" however, the mere knowledge of family-owned recipes alone cannot be considered sufficient to rise to a level of knowledge that is specialized or advanced. While the AAO does not doubt that the beneficiary is qualified to fulfill the duties of the U.S. assignment, the petitioner's claims that the beneficiary possesses specialized knowledge, or that he would be employed in a position requiring specialized knowledge, fail on an evidentiary basis.

Other than its unsupported statements stating that the beneficiary created 15 new recipes and a statement indicating that the beneficiary possesses a unique knowledge of family-owned recipes, the petitioner has not clearly demonstrated that the beneficiary possesses a level of knowledge that is specialized or advanced. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position abroad and in the United States that would differentiate that employment from a product development position at other employers within the industry. The petitioner has not provided evidence regarding the complexity of the recipes or cooking techniques or explained why the knowledge could not be transferred to an experienced food industry professional within a short period of time.

Additionally, the petitioner claims that the beneficiary's employment abroad involved specialized knowledge because it required the beneficiary to know and apply the petitioner's family-owned recipes. The petitioner provided the above description of the beneficiary's duties at the foreign entity and asserts that his position as VP of Marketing and Research and Development involves specialized knowledge. However, in examining the beneficiary's job duties abroad, it has not been established that the beneficiary's position abroad involves specialized knowledge.

The description of the beneficiary's duties abroad is the same as his proposed duties in the United States. The fact that the beneficiary knows family-owned recipes and ensures compliance with those recipes does not constitute specialized or advanced knowledge. The petitioner also claims that the beneficiary's role as creator of some new recipes demonstrates that he possesses specialized knowledge and that his position abroad involves specialized knowledge, but the petitioner has failed to provide sufficient evidence to establish that the beneficiary's level of knowledge is specialized or advanced.

Therefore, although the petitioner asserts that the beneficiary's positions in the United States and abroad require specialized knowledge, the petitioner has not sufficiently articulated or documented its claims. Other than submitting a general description of the beneficiary's current and proposed job duties and a listing of dishes and creators, the petitioner has not identified any aspect of the beneficiary's position which involves knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests that rises to a level that is special or advanced. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the same or similar position at other employers within the industry. The petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The AAO acknowledges the petitioner's reliance on a 1994 legacy Immigration and Naturalization Service policy memorandum. *See* Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Special Knowledge," (March 9, 1994). However, the Puleo memorandum concluded with a note about the burden of proof and evidentiary requirements for the L-1B 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.

Puleo Memorandum at p.4.

Further, USCIS has issued guidance specific to L-1B petitioners operating in the restaurant industry. See Memorandum of Fujie Ohata, Director, Service Center Operations, USCIS, *Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status*, (September 9, 2004) ("2004 Ohata Memorandum"). While the beneficiary in this matter is not a cook or chef, his claimed knowledge relates almost entirely to the foreign entity's closely-held recipes, its cooking techniques and the cuisine of the Philippines. The Ohata Memorandum, at page 3, states, "Recipes and cooking techniques that can be learned by a chef through exposure to the recipe or cooking techniques for a brief or moderate period of time generally do not constitute specialized knowledge." Further, the Ohata Memorandum states that "the fact that the knowledge may be closely held within a company, without more, does not establish that the knowledge is specialized." *Id.*

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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 the petitioner has not met that burden.

ORDER: The appeal is dismissed.