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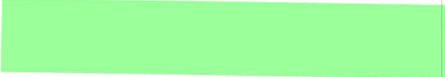


U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 05 2014**

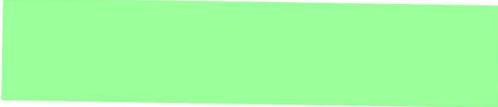
Office: CALIFORNIA SERVICE CENTER



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 (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,

4 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The petitioner filed an appeal and on June 27, 2011 the Administrative Appeals Office ("AAO") withdrew the director's decision and remanded the matter to the director for further action and entry of a new decision. The director recommended denial of the petition and certified the decision to the Administrative Appeals Office (AAO) for review. *See* 8 C.F.R. § 103.4(a)(1). The director's decision will be affirmed and the petition will be denied.

The petitioner filed this nonimmigrant visa petition to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), U.S.C. § 1101(a)(15)(L). The petitioner, a seafood processing company, is a subsidiary of [REDACTED] Ltd. The petitioner seeks to employ the beneficiary in the position of Seafood Processing Technical Advisor for a period of three years. The petitioner indicates that the beneficiary will work onsite at seafood processing plants operated by its affiliates and suppliers.

The director initially denied the petition, concluding that the petitioner failed to establish that the beneficiary 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, as required by 8 C.F.R. § 214.2(l)(3)(iii). The director determined that the petitioner had employed the beneficiary intermittently in E-1 nonimmigrant status, but found no evidence that the beneficiary had been working for the parent company in Japan during this period of intermittent employment.

The petitioner subsequently filed an appeal. The AAO disagreed with the director's reasoning and withdrew the director's decision. The AAO remanded the matter to the director after determining that there was insufficient evidence in the record to establish that the beneficiary was employed by a qualifying organization abroad for one continuous year prior to commencing his intermittent E-1 employment in the United States. The AAO further instructed the director to request additional evidence regarding the beneficiary's claimed specialized knowledge.

After requesting additional evidence and reviewing the petitioner's response, the director denied the petition and certified his decision to the AAO on February 6, 2013. The director determined that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he had been or would be employed in a capacity requiring specialized knowledge.

Counsel for the petitioner submits a supplemental brief and evidence for review on certification. Counsel claims that the petitioner has submitted ample evidence of the beneficiary's qualifications as a specialized knowledge worker.

#### 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.

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.*

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.

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.

## II. ISSUE ON CERTIFICATION

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).

### A. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 30, 2009. The petitioner indicated on the Form I-129 that the beneficiary has been employed in the position of seafood processing technician for the petitioner's parent company and its affiliates since March 1972, where "he has been engaged in seafood processing of bottom fish, crab, pollock roe and salmon roe." The petitioner stated that his role as a seafood processing technical advisor for the U.S. company will require him to "provide technical advice and assistance on processing of pollock roe, surimi and crab for export to Japan and other countries."

In a letter dated January 23, 2009, the petitioner described the beneficiary's proposed role as follows:

[The beneficiary] will provide technical advice and assistance in connection with the seafood processing operations of our U.S. subsidiaries and suppliers in Alaska. He will make sure that the seafood products we purchase for export to Japan meet the quality control standards of [the parent company] and the Japanese market. He will inspect the raw materials and work in progress, he will recommend changes and adjustments to the seafood processing equipment, he will supervise and train the factory workers, and he will troubleshoot problems and issues that arise during the seafood processing operation. [The beneficiary] will also make recommendations concerning ongoing quality control and continuous product improvement measures.

[The beneficiary's] initial assignment will be to provide technical advice and assistance for the pollock roe processing on the Pacific Glacier vessel in the Bering Sea. After that he will be assigned to other seafood processing plants that are owned and operated by our U.S. affiliates and suppliers.

The petitioner provided a description of the seafood processing operations carried out by its U.S. affiliate, Unisea, Inc., and other affiliates, subsidiaries and suppliers. The vessel to which the beneficiary will be assigned, Pacific Glacier, produces pollock surimi and pollock roe for export to Japan and other countries. The petitioner indicated

that its agreement with the vessel requires it to place one Japanese technical advisor on board to supervise the quality control of the pollock roe and surimi being exported, during the months of January to March and May to October each year. The petitioner explained that "the Japanese technical advisors play a critical role in ensuring that the products meet the strict standards of the Japanese market and achieve the highest price for the U.S. exporters."

The petitioner stated that surimi is a minced fish paste used to make imitation crab meat, lobster meat, and a wide variety of traditional Japanese fish cakes. The petitioner indicated that "the surimi processing operation involves the use of highly advanced automated equipment. Adjusting the equipment to the character of the raw material, as well as controlling the texture and consistency of the extruded meat, are keys to the quality control." The petitioner further stated that the ingredients that are mixed with the surimi are proprietary to the parent company and its affiliates. The petitioner stated that "surimi specialists with many years of experience are needed to supervise the operation. Surimi processing requires hands-on supervision of experienced surimi specialists who can judge the freshness of the raw material and the consistency of the work in process and then make quick adjustments to the processing equipment and additives to ensure the highest quality of the end product."

The petitioner stated that pollock roe is the fully ripe egg mass of pollock fish. The petitioner indicated that "the sorting, grading, packaging and freezing of pollock roe must be done under close supervision of a pollock specialist in order to achieve the highest price in the Japanese market." The petitioner stated that it needs two Japanese specialists for each shift of surimi processing and one Japanese technical advisor for each shift of pollock roe processing.

Finally, the petitioner described the beneficiary's experience as follows:

[The beneficiary] has about 36 years of experience as a Seafood Processing Technician. He joined [the parent company] in March 1972 and he is one of their most senior Seafood Processing Technicians. From 1972 to 1994, he worked mainly on processing of surimi on Japanese factory trawlers in the Bering Sea and also in shoreside plants in Alaska. From 1994 to 2006, he engaged in processing of surimi on board the [REDACTED] and in shoreside plants in Alaska on a seasonal basis. From 2007 to present, he has engaged in processing of crab and pollock roe in shoreside plants in Alaska on a seasonal basis. [The beneficiary] is well qualified to serve as a Seafood Processing Technical Advisor for [REDACTED]

The petitioner submitted a copy of its parent company's annual report; a company profile for its U.S. affiliate, [REDACTED], which operates processing facilities in [REDACTED] general organizational charts depicting the organization of the processing plants; the beneficiary's brief resume; and a letter from the [REDACTED] verifying that beneficiary, with 36 years in the industry, has the "necessary experience and knowledge to process and grade Surimi, Pollock Roe, Crab and other marine products which are exported to Japan."

The director issued a request for additional evidence ("RFE") on February 20, 2009, in which she instructed the petitioner to submit, inter alia, the following: (1) a more detailed description of the beneficiary's duties in the U.S.; (2) a more detailed explanation of exactly what is the equipment, product, system, technique, research or service of which the beneficiary has specialized knowledge, along with information regarding whether the product is produced by other employers in the United States and abroad; (3) an explanation of how the duties the beneficiary will perform in the U.S. are special, advanced or otherwise different from those performed by other workers employed by the petitioner or other U.S. employers in the industry; (4) information regarding the training the beneficiary will provide, if applicable; and (5) the impact on the petitioner's business if the petitioner is unable to obtain the beneficiary's services. The director requested similar information with respect to the beneficiary's duties abroad, as well as copies of contracts, statements of work, work orders, or service agreements. The director noted that the previously submitted Technical Assistance Agreement between the petitioning U.S. company and [REDACTED] the owner of the vessel the beneficiary will be working on, is neither dated nor signed.

In a response dated April 2, 2009, counsel further discussed the beneficiary's role and responsibilities as follows:

In recent months, [the beneficiary] has been in charge of the quality control of the salted pollock roe production at the [REDACTED]. He is returning to Japan at the end of the Pollock A Season and then will come back to the United States in May to provide technical advice and assistance for the pollock roe processing on the [REDACTED] factory vessel operating in the Bering Sea. The Pacific Glacier has been out of operation since a fire broke out on the vessel last year. [The petitioner] has an agreement with [REDACTED] to purchase the surimi and pollock roe produced on the vessel for export to Japan, and they also have an agreement to provide technical advice and assistance to make sure the surimi and pollock roe are produced in accordance with the quality control standards and requirements of [the petitioner] and the Japanese market.

[The beneficiary] will work on the [REDACTED] for several months. After that, he will return to the [REDACTED] to continue helping [REDACTED] improve the salted roe production for export to the Japanese market. After the [REDACTED] salted roe production is operating well, he will serve as a quality control technician for surimi processing at the [REDACTED]. Since [the beneficiary] is one of [the petitioner's] most experienced seafood processing specialists, he may be sent to help other affiliates and suppliers as the need arises depending on the fishing conditions and results of operations in different areas. Sometimes there are special quality control problems or difficulties at a particular plant and it is crucial that [the petitioner] is able to send a quality control specialist to help resolve the problem. [The petitioner] also needs the flexibility to change assignment of [the beneficiary] if one of the other technical advisors gets injured or sick and cannot continue providing the needed services.

In response to the director's request that the petitioner establish that the beneficiary has the required specialized knowledge, counsel emphasized that the beneficiary has 36 years of experience in quality control of the petitioner's seafood processing operations, especially surimi, pollock roe, and crab. Counsel asserted that the quality control of the surimi and pollock roe processing operation "requires a specialist who has years of

experience and who can make quick adjustments to the equipment to make sure the processing is done correctly." Counsel emphasized that most seafood processing work is done by U.S. workers, while the job of the technical advisor is to ensure that the work is done properly and that the quality of the end product meets the standards and requirements of the parent company and the Japanese market. Counsel further indicated that the beneficiary would help to supervise and train U.S. workers, citing high employee turnover as a factor.

In response to the director's query about the impact the beneficiary's absence would have on its business, counsel stated that his inability to undertake the L-1B assignment may result in a reduced price for the U.S. exports sold to the Japanese markets or require the foreign entity to purchase its pollock roe from another supplier in another country where it can ensure the quality control of the pollock roe processing operation.

Finally, with respect to the director's request that the petitioner provide more detailed information regarding the beneficiary's qualifying employment abroad, counsel reiterated that the beneficiary has over 36 years of experience as a seafood processing quality control specialist and the petitioner relies on him to provide the technical assistance needed by its U.S. suppliers to make sure the surimi, pollock roe, crab and other seafood products are produced in accordance with the quality control standards of the petitioner and the Japanese markets.

The petitioner submitted a separate statement in response to the RFE. In its statement, the petitioner expanded on the beneficiary's specialized knowledge as follows:

[The beneficiary] is one of our most experienced seafood processing specialists. He began working with [the parent company] in Japan in 1972 and he has over 36 years' experience in quality control of [the parent company's] seafood processing operations, especially surimi, pollock roe and crab. He is also a specialist on bacterial control and testing in fresh seafood products. From 1972 to 1988, he worked on the [redacted] a surimi processing mothership owned and operated by [the parent company]. In 1989, 1990 and 1993, he underwent specialized training in bacteria control and surimi processing at [the parent company's] central seafood testing laboratory in Japan. From 1990 to 2006, he was a quality control technician for surimi processing at the surimi plants owned by [the parent company] or its subsidiaries and suppliers. During that same period, he also took charge of quality control for Salmon roe and salted roe processing on motherboats and shoreside plants, unagi (eel) processing in China, and sashimi (raw tuna) processing in Australia. During the last two years, he has concentrated on crab processing and salted roe processing for [redacted] is trying to improve its processing of salted roe for the Japanese market, and [the beneficiary] has been leading this effort.

\* \* \*

Product or Service for Which [the Beneficiary] will Provide Specialized Knowledge. As mentioned above, [the beneficiary] is one of our senior seafood processing quality control specialists. He has been working with [the parent company] since 1972 and most of his career

has been specializing in surimi, pollock roe and crab processing. He has specialized training in bacterial control and in using [the petitioner's] equipment and methods for producing top quality surimi and pollock roe for the Japanese market. . . . The quality control of the surimi and pollock roe processing operation requires a specialist who has years of experience and who can make quick adjustments to the equipment to make sure the processing is done correctly. For pollock roe, the delicate egg sac must be extracted from the fish without damage and then quickly cleaned and frozen and sorted into 20 different grades based on size, maturity, appearance and other factors.

In addition, the petitioner submitted a separate document "explaining how [the beneficiary] possesses all of the characteristics of an employee who has specialized knowledge." In this regard, the petitioner stated that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace, noting that the beneficiary's knowledge about pollock, surimi, and crab processing "is important to the quality control of the processing operation and the reputation and price of the products exported to Japan."

The petitioner further indicated that the beneficiary is qualified to contribute to the U.S. company's knowledge of foreign operating conditions as a result of specialized knowledge not generally found in the industry. The petitioner explained that the beneficiary will contribute to the knowledge of Japanese seafood processing methods at the U.S. plants of the petitioner's affiliates and suppliers, and that his advanced level of knowledge about pollock roe and surimi processing is not generally found in the industry.

In addition, the petitioner stated that the beneficiary's services have been utilized abroad in a capacity involving significant assignments which have enhanced the company's productivity, competitiveness, image, or financial position. Specifically, the petitioner indicated that the beneficiary has worked for the foreign entity's affiliates and suppliers all over the world, engaged in the quality control of all aspects of surimi and pollock roe processing operations. The petitioner emphasized that Unisea is trying to improve its processing of salted roe for the Japanese market and the beneficiary has been leading this effort.

The petitioner stated that the beneficiary also possesses knowledge which normally can only be gained through prior experience with the company, noting that the parent company "has developed its own processes and procedures for producing surimi." The petitioner noted that the beneficiary possesses knowledge about the parent company's methods which can only be gained through prior experience with the company, and that his knowledge of seafood processing was acquired over a period of 36 years and it cannot be easily taught or transferred to another person. The petitioner emphasized that there is a high turnover among the Alaskan workforce due to the isolated location and difficult working conditions.

Finally, the petitioner indicated that the beneficiary's 36 years as a surimi processing specialist for its parent company has given the beneficiary knowledge of pollock roe and surimi processing that is of a sophisticated nature and is not generally known in the United States.

In a separate statement, the petitioner noted that, since joining the petitioner's parent company in 1981, the beneficiary has spent most of his career specializing in crab processing. The petitioner noted that the beneficiary "has specialized training in using [the foreign entity's] methods for producing top quality crab products for the Japanese market." The petitioner emphasized that its U.S. affiliates and suppliers have plenty of U.S. workers to perform "regular crab processing work," and that it requires the beneficiary to provide technical assistance and ensure the quality control of the processing operation.

The petitioner's response to the RFE also included a chart outlining the steps in the pollock roe processing operation (frozen and salted roe), from off-loading to cold storage of processed pollock roe. The petitioner summarized the critical role of the Japanese roe specialist in the frozen roe operation as follows:

The critical points of roe productions are how fast and efficiently roe is sorted into over twenty grades, and frozen without compromising the freshness. The freshness and accuracy of grading create confidence on the quality which leads to brand recognition. The sorting workers make judgments between grades of finite differences. It is roe technicians' responsibility to guide the workers so that they can make sorting judgments instantly. It is the expertise of roe technicians that uphold the confidence in accuracy, thus maintaining [redacted] brand recognition.

Roe varies from year to year, and from season to season. For instance, grading elements, such as maturity and size, vary greatly. Also skin thickness, individual egg size, and colors vary, that can not be written in the manual. Roe technicians provide comments on the characteristics of the roe, which are helpful in secondary processing in Japan or China, or offer appropriate advice to customers to gain confidence in the product. This is also an important role of roe technicians.

The petitioner also summarized the critical role of the Japanese roe specialist in the salted roe operation as follows:

Salted cod roe is sold in the Japanese market. Only experienced and expert Japanese roe technicians are capable of managing the process that requires judgment on color, taste and texture that are unique to the market.

Salted cod roe is a raw food product. Only roe technicians who have a thorough knowledge of sanitary and bacterial management can give proper guidance.

The petitioner's response to the RFE also included a chart outlining the steps in the surimi processing operation, from off-loading to cold storage of processed surimi. The petitioner summarized the critical role of the Japanese surimi specialist as follows:

Elasticity is a critical indicator in surimi quality. Measurement results of elasticity for surimi made from then available raw fish material can only be obtained after the elasticity test which is carried out two days from production. By this time, the raw dish material has vastly

transformed. [REDACTED] carries this burden of time-lag and risks. It depends on expert surimi technicians who are experienced and hold specialized knowledge and skills in surimi production processes. It entrusts the operation of critical equipment to these surimi technicians in order to maintain the brand reputation of [REDACTED] surimi products.

The petitioner submitted a copy of the [REDACTED] and indicated that the entire manual is 224 pages long.

The petitioner submitted an "onboard history" for the beneficiary which provides his dates of assignment, ship name, and the types of products with which he worked, since joining the foreign entity in 1972. The petitioner then submitted a document that provides the details of the beneficiary's experience and training. After a listing of each of his assignments throughout his tenure with the company, the document states the following:

He is a specialist of seafood quality control.

He has got many experience and training od quality control [sic].

The skill of a quality control of a seafood is effective to all the food [sic].

Therefore, he has experience of various fish processings [sic] at the fishery product processing plant in the world [sic].

He is working for a long time at the [REDACTED] is also high.

[REDACTED] is furthering development of Salted pollock roe turned to Japanese market, and he will be taking charge of the development and production.

[REDACTED] needs the skill of QC and experience of Salted salmon roe production which he has.

After making stable production of Salted pollock roe in [REDACTED] establish, probably he will take charge of [REDACTED] plant in the future [sic].

The director denied the petition on June 2, 2009, concluding that the petitioner failed to establish that the beneficiary 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, as required by 8 C.F.R. § 214.2(l)(3)(iii). In denying the petition, the director observed that the beneficiary has been employed intermittently by the U.S. petitioner in E-1 status since 2002. The director further emphasized that the record contains no evidence that the beneficiary has been working for the petitioner's parent company in Japan.

The petitioner subsequently filed an appeal and on June 27, 2011, the AAO withdrew the director's decision and remanded the petition to the director, concluding that the director's decision was in error in that the beneficiary had been employed for one continuous year abroad, despite his subsequent stay in the United States for a branch, affiliate, subsidiary, or parent of the foreign entity in an authorized nonimmigrant status. The AAO remanded the decision to the director finding insufficient evidence to warrant a conclusion that the beneficiary possessed the one year of continuous full-time employment abroad prior to undertaking his regular assignments to the United States. Additionally, the AAO found that the record did not establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity

requiring specialized knowledge. The AAO noted that the evidence of record failed to establish either that the beneficiary's last position abroad (in the late 1980s) or his current position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. The AAO instructed the director to request additional evidence regarding the beneficiary's specialized knowledge.

The director issued a second RFE on February 3, 2012, in which she instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties abroad to establish that the position involved specialized knowledge; (2) a more detailed description of the beneficiary's specialized knowledge, obtained through education, training, and employment; (3) a more detailed description of the specialized knowledge duties the beneficiary will perform in the U.S.; and (4) information regarding the training the beneficiary will provide, if applicable. The director advised the petitioner that any assertion that the beneficiary possesses an advanced level of knowledge of the petitioner's processes and procedures must be supported by evidence describing and setting apart that knowledge from the elementary knowledge possessed by others. The director advised that it is the weight and type of evidence that establishes whether or not the beneficiary possesses specialized knowledge.

In response to the second RFE, the petitioner submitted a letter explaining that it would not bring the beneficiary to the United States for ordinary work that could easily be done by U.S. workers. The petitioner provided a brief background of its operations in the United States and in reference to the beneficiary's specialized knowledge, the petitioner simply quoted from previously submitted documents in support of the petition and in response to the first RFE. The only additional information provided by the petitioner was the following:

We also submitted photos, organization charts, and a detailed description of the seafood processing operations at the [REDACTED] . . . which made clear that [the beneficiary's] role is much different than ordinary U.S. seafood processing workers. There are about 900 workers at the [REDACTED] . . . The surimi and roe processing also are done largely by U.S. workers, but [REDACTED] [the beneficiary] are needed on each production line during each shift to supervise and direct the technical aspects of the surimi and roe processing. As you can see, surimi and roe processing are complex processes involving sophisticated equipment and special additives which must be constantly fine-tuned and adjusted during the processing operation to ensure the quality of the end product. Four to five surimi and roe specialists like [the beneficiary] are needed to ensure that the critical aspects of the surimi and roe processing operations are done correctly so that the end products meet the strict quality control standards of [the parent company] and the Japanese market.

\* \* \*

In response to the prior RFE, we also submitted . . . staffing charts of our company, [REDACTED] and [REDACTED] showing the large number of U.S. workers involved in the seafood processing operations in Alaska and the small number of Japanese specialists who provide critical technical advice and assistance to ensure that the surimi and roe products meet the quality control standards of [the

parent company] and the Japanese market. These staffing charts and the [previously submitted] descriptions and photos of the surimi and roe processing lines make clear that staffing charts and the above descriptions and photos of the surimi and roe processing lines make clear that [the beneficiary] is not being employed in the same position as ordinary U.S. processing workers, but rather he plays a key role in supervising and instructing the U.S. workers involved in the surimi and roe processing. We wish to emphasize that surimi and roe are specialty products produced primarily for the Japanese market, and [the beneficiary] is only needed to supervise the surimi and roe processing, not the frozen fillet production, crab processing, and fishmeal production which are staffed by U.S. workers.

The director denied the petition on February 6, 2013 and certified the decision to the AAO, 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 found that the beneficiary performs the same or similar duties as other workers in a similar position in the field and the petitioner failed to submit sufficient evidence to establish that the position of Seafood Processing Technician involves a special or advanced level of knowledge in the seafood processing field or related occupation. The director reached a similar conclusion regarding the beneficiary's proposed employment in the United States, noting that the knowledge possessed by seafood processing specialists has not been shown to be unique to a particular employer, but rather appears to be common throughout the petitioner's industry. The director further found that the petitioner has submitted insufficient evidence to establish that the beneficiary has knowledge that is special or advanced in comparison to other similarly experienced Seafood Processing Technician or person in a related occupation employed in the same field.

On certification, counsel for the petitioner asserts that the director erred by concluding that the beneficiary is an ordinary skilled worker. Counsel emphasizes that the director requested evidence pertaining to the beneficiary's specialized knowledge in the first RFE and later did not cite it as a ground of ineligibility in her original decision. Therefore, counsel asserts that had previously determined that the beneficiary met the eligibility requirements in regards to specialized knowledge and the new decision is arbitrary and capricious. Counsel incorporates all previously submitted statements provided by the petitioner into his brief and asserts that such statements provide "substantial evidence" concerning the beneficiary's specialized knowledge. Counsel contends that USCIS simply overlooked or ignored the evidence submitted, and emphasizes that its parent company "has developed its own processing methods and techniques to ensure the quality of its fresh, cooked and frozen crab products meet the requirements of the Japanese market, including the appearance of the final product which is critical to the reputation of its brand."

#### B. Analysis

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.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and 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. 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.

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

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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 matter has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated or documented 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 seafood processing specialists employed in the petitioner's industry. 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 claims that the beneficiary's specialized knowledge is based upon his knowledge of the petitioner's parent company's seafood processing systems and techniques, quality control standards and the special requirements of the Japanese market. However, the petitioner has not differentiated its processing methods or quality standards from those of any other seafood company. Merely claiming that the beneficiary is familiar with internal processes and standards is insufficient if those standards are not materially different from those that are generally known and used by similarly experienced workers. The petitioner, although referencing the beneficiary's training in 1989, 1990 and 1993, does not specify the length of the training and does not detail the focus of the training. Other than the brief reference, the record does not include documentary evidence of the training the beneficiary completed. 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, supra*.

It is reasonable to believe that the petitioner's industry is highly regulated in the United States and Japan, with quality control standards that must be met by any licensed and accredited seafood processor. While the petitioner provided a fairly detailed description of the steps that occur during surimi processing on its supplier's Alaska Ocean vessel, it remains unclear what, if any, specialized knowledge is required to supervise these operations, or what differences exist between the Japanese market and other markets in terms of seafood processing, appearance and quality control. While the petitioner describes pollock surimi as a "specialty Japanese product" the petitioner also indicates that the product is used in such common products as imitation crab and lobster meat, and noted its popularity in the United States and Canada.

Japan is one of the two leading export market for Alaska's seafood, and seafood is Alaska's largest export commodity.<sup>1</sup> Given the long-standing trade relationship, the petitioner's claim that Alaskan seafood processors, apparently including its own U.S. based affiliate which has been operating a surimi processing plant since 1986, are unfamiliar with Japanese market requirements is not credible. Even if the petitioner

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<sup>1</sup> See "2011 Exports," State of Alaska, Office of the Governor <[http://gov.alaska.gov/parnell\\_media/resources\\_files/alaskaexportcharts2011.pdf](http://gov.alaska.gov/parnell_media/resources_files/alaskaexportcharts2011.pdf)> (accessed on February 3, 2013, copy incorporated into the record of proceeding).

could establish that knowledge of Japanese market requirements constitutes specialized knowledge for the purposes of employment in the United States, the petitioner is also required to establish that the beneficiary's qualifying period of employment abroad involved specialized knowledge. The petitioner has not claimed that Japanese seafood processing specialists working in Japan are unfamiliar with Japanese market requirements, and the AAO assumes that such knowledge is in fact commonly held among the foreign entity's workforce. As the petitioner has not specified the amount of training its technical staff members receive in the company's equipment and procedures, 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 seafood processing specialist who is familiar with the Alaskan and Japanese seafood industries.

Overall, the evidence submitted does not establish that knowledge of the petitioner's processing or quality control techniques or familiarity with the Japanese seafood market constitutes specialized knowledge or that this knowledge is so complex that it could not be readily transferred to similarly trained and experienced employees from outside the petitioning organization.

To establish eligibility in this proceeding, the petitioner may alternatively establish that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes and procedures and that the position requires such knowledge. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D).

In this regard, the petitioner relies on the beneficiary's long tenure with the foreign entity working in surimi processing operations in Japan and the United States. The petitioner has not explained in any detail the specific capacities in which the beneficiary has worked, and it is not clear to what extent he has been employed as a regular processing technician, or how long he has been employed as a "specialist" or in a "technical advisor" position. The evidence submitted does not demonstrate a progression in his skills, assignments or level of authority over his long tenure with the company or suggest that he has achieved a role that is reserved for those with an advanced knowledge of the company's policies and procedures. It is unclear at what point the beneficiary was considered to have acquired specialized knowledge. The petitioner has also not provided any information that would assist USCIS in comparing the beneficiary's skills and knowledge to that of other similarly employed workers within the organization, many of which appear to also have a similarly long tenure with the company.

Although it is accurate to say that the statute does not require that the advanced knowledge be narrowly held throughout the company, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company. Here, the petitioner's argued standard for advanced knowledge appears to require nothing more than an extended period of service performing duties related to the U.S. position, qualifications that may be widely held by the petitioner's Japanese workforce.

Here, the petitioner, through counsel, continually claims that Japanese seafood processing technicians like the beneficiary are of crucial importance to the petitioner's business. However, the petitioner has not provided any information pertaining to others employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from other similarly-employed workers. While the

petitioner continually seeks to distinguish between the beneficiary and the thousands of ordinary seasonal skilled seafood processing workers employed by its affiliate and suppliers in Alaska, it does not attempt to distinguish his knowledge or duties from those possessed by more experienced and higher-level personnel such as quality control specialists or managers. Without such evidence, the AAO cannot conclude that the beneficiary's knowledge is "advanced" and, for the reasons discussed above, cannot accept the blanket assertion that all Japanese processing specialists employed by the foreign entity possess "advanced knowledge" of the petitioner's processes and procedures.

It appears that the petitioner's business thrives on providing high quality seafood to the Japanese market. Its practice of providing a small number of native Japanese employees to U.S.-based seafood processing operations undertaken by its affiliates and suppliers may assist the company in reaching its objectives. However, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of processing pollock roe and surimi for the Japanese market is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be a skilled and important employee of the organization. The AAO does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his duties for the foreign entity for many years. However, the successful completion of one's job duties does not distinguish the beneficiary as an employee possessing advanced knowledge of the petitioner's processes and procedures, nor does it establish employment in a specialized knowledge capacity with the foreign entity.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. While the position of seafood processing technical advisor may require a comprehensive knowledge of the manner in which to process surimi products in a manner which conforms to the requirements of the Japanese export market and the petitioner's quality standards, the petitioner has not established that this position requires "specialized knowledge" as defined in the regulations and the Act. Based on the evidence presented, 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.

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, supra*. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* USCIS 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. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge. For this reason, the appeal will be dismissed.

Finally, the AAO acknowledges counsel's claim that USCIS has approved a number of similar petitions filed by the petitioning company on behalf of Japanese seafood processing specialists in the past. However, as observed above, each nonimmigrant petition filing is a separate proceeding with a separate record and a

separate burden of proof. 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 upon further review of the record of proceeding concluded that the instant beneficiary is ineligible for the benefit sought. The director articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not 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. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

### III. CONCLUSION

The director's decision to deny the petition will be affirmed. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here the petitioner has not met that burden.

**ORDER:** The director's decision is affirmed. The petition is denied.