



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 12 2015

PETITION RECEIPT #: 

IN RE: Petitioner:
Beneficiary:



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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The petitioner, an operator of Brazilian *churrasco*-style restaurants in the United States, seeks to transfer the beneficiary from its Brazilian subsidiary to serve in the position of *churrasqueiro* chef for a period of three years. More specifically, the petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) seeking to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(L).

In a decision dated May 20, 2010, the Director, Vermont Service Center, denied the petition. The petitioner filed a complaint for declaratory and injunctive relief in federal court. [REDACTED] *v. U.S. Dep’t of Homeland Sec.*, [REDACTED] (D.D.C. filed [REDACTED], 2010). Following a joint motion to stay the court proceedings, the director reopened his decision and certified the matter to the Administrative Appeals Office (AAO). On October 3, 2011, we affirmed the denial. The petitioner subsequently filed a complaint in the United States District Court for the District of Columbia, which granted the government's motion for summary judgment. [REDACTED] *v. U.S. Dep’t of Homeland Sec.*, 959 F.Supp 2d 32 (D.D.C. 2013). The petitioner appealed from that judgment.

On October 21, 2014, the United States Court of Appeals for the District of Columbia Circuit reversed the district court’s judgment and remanded with instructions to vacate our decision and remand for further proceedings consistent with their opinion. [REDACTED] *v. U.S. Dep’t of Homeland Sec.*, 769 F.3d 1127 (D.C. Cir. 2014). The Court instructs us to consider: (i) the relevance of cultural knowledge as a factor of specialized knowledge, (ii) the petitioner’s economic inconvenience as a factor for determining specialized knowledge, (iii) the pattern of decision making in the petitioner’s previously submitted cases, and (iv) our review of the evidence and the resulting factual conclusions. 769 F.3d at 1139-42, 1142-43, 1146, and 1146-48. Following the remand, we reopened our decision and received a supplemental brief from the petitioner.

Upon careful consideration of the D.C. Circuit Court’s opinion and the arguments and evidence in the record of proceeding, we reaffirm our prior determination that the petitioner has not established by a preponderance of the evidence that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity.¹

¹ In its supplemental brief on remand, the petitioner claims that the D.C. Circuit Court’s decision “leaves no reasonable legal or evidentiary basis for the AAO to do anything but approve [REDACTED] L-1B petition.” We disagree. The court applied the “ordinary remand” rule, recognizing its limited role in reviewing agency action. 769 F.3d at 1139 (citing *INS v. Orlando Ventura*, 537 U.S. 12, 16–17 (2002)); see also *Soltane v. Department of Justice*, 381 F.3d 143, 152 (3d Cir. 2004). The Court confirmed that the agency maintains “substantial discretion” in considering specific questions anew, 769 F.3d at 1142, and remanded the matter “for additional investigation or explanation.” 769 F.3d at 1149.

I. APPLICABLE LAW AND POLICY

To establish eligibility for the L-1B nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act and 8 C.F.R. § 214.2(l). Specifically, a qualifying organization must have employed the beneficiary in a qualifying “specialized knowledge,” “executive,” or “managerial” capacity for one continuous year within the three years preceding the beneficiary’s application for admission into the United States. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(A). The beneficiary of an L-1B nonimmigrant visa petition must seek to enter the United States temporarily to continue rendering his or her services to a branch of the same employer or a parent, subsidiary, or affiliate thereof in a specialized knowledge capacity. *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.

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.

Since the promulgation of the current regulatory definition of specialized knowledge, the former Immigration and Naturalization Service (INS) and U.S. Citizenship and Immigration Services (USCIS) have also interpreted specialized knowledge through several memoranda. *See, e.g.,* Memorandum from James A. Puleo, Exec. Assoc. Comm’r, INS, *Interpretation of Specialized Knowledge* (Mar. 9, 1994) (“Puleo Memorandum”); Memorandum from Fujie Ohata, Dir., Serv. Ctr. Operations, USCIS, *Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status* (Sept. 9, 2004) (“Ohata Memorandum”).²

² On March 24, 2015, USCIS released a consolidated policy memorandum titled “L-1B Adjudications Policy” (PM 602-0111). Allowing for a 45-day public feedback period, the policy will go into effect on August 31, 2015. The memorandum is consistent with the previously issued policy memoranda but provides consolidated and authoritative guidance on adjudicating specialized knowledge cases and ensures compliance with the L-1 Visa Reform Act of 2004, as

The 2004 Ohata Memorandum specifically addresses the interpretation of specialized knowledge in L-1B cases involving chefs and specialty cooks. In that memorandum, USCIS clarified that “Chefs or Specialty Cooks generally are not considered to have ‘specialized knowledge’ for L-1B purposes, even though they may have knowledge of a restaurant’s special recipe or food preparation technique.” Ohata Memorandum at 1. Referencing the Puleo Memorandum, the memo advised adjudicators that “in addition to demonstrating the complexity of the knowledge and the fact that the knowledge is not generally found in the industry, it is necessary to determine the extent to which the petitioning entity would suffer economic inconvenience . . . if it had to hire someone other than the particular overseas employee on whose behalf the petition was filed. *Id.* at 1-2.

Finally, the Ohata Memorandum noted that, while chefs generally are not considered to have specialized knowledge based on their knowledge of a restaurant’s recipes or cooking techniques, some chefs may perform duties ancillary to cooking food which must also be evaluated when determining whether the chef possesses specialized knowledge. The memorandum instructs adjudicators to “assess the length and complexity of in-house training required” to perform such ancillary duties in determining whether such responsibilities require specialized knowledge and as an indicator of the “economic inconvenience, if any, the restaurant would undergo were it required to train another individual to perform the same duties.” *Id.* at 2.

II. THE PRIOR AAO DECISION

In our prior decision, we determined that the beneficiary possesses general knowledge of the culture and culinary traditions of the [REDACTED] region of Brazil that would make him an asset to any Brazilian *churrascaria* restaurant. We also found, however, that the petitioner had not established that the beneficiary’s knowledge, either with respect to the culinary traditions of southern Brazil or with respect to the petitioner’s processes and procedures for conveying those traditions in its restaurants, is substantially different from that generally found in the petitioner’s industry, such that the knowledge could be considered specialized. In addition, we found that the evidence did not support a finding that the beneficiary possesses an advanced level of knowledge of the processes and procedures of the company in comparison to others who possess an elementary or basic knowledge of such processes and procedures. Finally, we found that there was insufficient evidence to demonstrate that the beneficiary completed the foreign subsidiary’s 18- to 24-month training program, and that there was an unresolved discrepancy in the record with respect to the beneficiary’s job title abroad which called into question whether he was employed in the claimed specialized knowledge capacity. We concluded that these evidentiary deficiencies undermined the petitioner’s claim that the beneficiary possesses, and the *churrasqueiro* position requires, the claimed specialized knowledge.

The U.S. Court of Appeals for the District of Columbia Circuit found that we erred in two respects. First, the Court concluded that we erred in adopting, without reasoned explanation, “a categorical prohibition on any

codified at section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F). Upon the effective date of the memorandum, USCIS will rescind the previously issued L-1B policy memoranda.

and all culturally acquired knowledge supporting a ‘specialized knowledge’ determination.” 769 F.3d at 1139. Second, the Court concluded that substantial evidence did not support our factual determination that the petitioner had not established that the beneficiary completed the petitioner’s overseas training program. *Id.* at 1146-48. Concluding that our application of a categorical bar to cultural knowledge clouded our consideration of the record, the Court remanded the matter to the district court with instructions to remand the matter to us to reconsider the petition after clarifying the role of culturally acquired knowledge and skills. *Id.* at 1142, 1149, 1152.

III. ANALYSIS

Our decision will address the Court’s remand in four parts. First, we will explore the significance of the “prior pattern of decisionmaking” in the petitioner’s previously approved cases. 769 F.3d at 1146. Second, we will examine the petitioner’s claim that culturally-acquired knowledge contributes to the beneficiary’s required “specialized knowledge.” *Id.* at 1139-42. Third, we will revisit our factual determination regarding the beneficiary’s claimed completion of the petitioner’s overseas training program. *Id.* at 1146-48. Finally, we will address the claimed economic difficulties of teaching or transferring culturally acquired skills and knowledge. *Id.* at 1143.

A. Procedural History and the Pattern of Decisionmaking

For context, we will start with the pattern of decisionmaking³ in this and the petitioner’s previously submitted cases.⁴ *See* 769 F.3d at 1146. In the years following the establishment of the petitioner’s first U.S. restaurant in [REDACTED], the INS and USCIS approved approximately 251 [REDACTED] L-1B visa petitions, including initial petitions and extensions. CAR at 558. In 2008, however, the U.S. Department of State refused visa issuance and returned a number of [REDACTED] petitions to USCIS for reconsideration based on “specific evidence of previously unknown facts” that arose during the beneficiaries’ consular interviews. *See, e.g.*, Memorandum from Consulate General of the United States of America, CAR at 620-21 (June 21, 2007).⁵ As a result of the

³ On this issue, the D.C. Circuit concluded that “[b]ased on the limited showing that [REDACTED] has made both here and before the Service, it has not met its burden of demonstrating either an unexplained break from past practice or settled law, or unreasoned differentiation in the treatment of similar cases.” 769 F.3d at 1146.

⁴ The petitioner summarizes the relevant events leading to this day in its First Amended Complaint for Declaratory and Injunctive Relief, filed on July 1, 2010. *See* Certified Administrative Record (CAR) at 558, 560. For the sake of efficiency, we do not repeat the history in full here.

⁵ The regulations may call for a notice of derogatory information prior to a director’s consideration of a consular return that arose in a separate visa petition. *See* 8 C.F.R. § 103.2(b)(16)(i). Because the petitioner introduced the consular returns prior to the director’s decision, however, we find that the petitioner was aware of this information. Thus, no notice was required under the regulations. *Id.*

consular returns, the director revoked the approval of at least nine [REDACTED] L-1B visa petitions based on the grounds provided at 8 C.F.R. § 214.2(l)(9)(iii)(A) (including “gross error”). CAR at 615, 617-19.

Despite the petitioner’s early assertion that the current case is “legally and substantively identical” to the visa petitions that USCIS had previously approved, the director denied the present petition after requesting additional evidence of the petitioner’s training program. In the ultimate denial that he certified for review, the director addressed the role of the consular returns as a basis for departing from the previous approvals. The director observed:

[W]hen USCIS has approved [REDACTED] *churrasqueiro* petitions on occasion, the U.S. consulate in [REDACTED] Brazil has returned them to USCIS requesting reevaluation because, in the opinion of the consular officer who interviewed the beneficiary, the position and the beneficiary did not qualify for an L-1B visa. New evidence discovered during [the] interviews has proved useful to USCIS in subsequent adjudications.

CAR at 368.⁶

While section 214(c)(1) of the Act requires USCIS to approve an L-1 visa petition prior to visa issuance, sections 104(a) and 221(a) of the Act govern overseas visa processing and confer “upon consular officers exclusive authority to review applications for visas.” *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1156-57 (D.C. Cir. 1999); *Ibrahim v. U.S. Dept. of Homeland Sec.*, --- F.Supp.3d ---, 2014 WL 6609111 at *20 (N.D. Cal. 2014). That authority includes the power to deny visa issuance, or suspend processing, and return approved petitions to USCIS for review and possible revocation.

The U.S. Department of State’s Foreign Affairs Manual explains that a consular officer must “have specific evidence of a requirement for automatic revocation, lack of qualification on the part of the beneficiary, misrepresentation in the petition process, or of previously unknown facts, which might alter USCIS’ [sic] finding,” before referring an approved L-1B visa petition to USCIS for reconsideration and possible revocation. 9 FAM 41.54, Note 3.3-3 to 22 C.F.R. § 41.53(c). Depending on the circumstances, a consular officer’s credibility determinations and any newly discovered facts may be highly probative, due to a consular officer’s ability to personally interview applicants and confirm facts asserted in a visa petition. *See, e.g., Matter of Ho*, 19 I&N Dec. 582 (BIA 1988) (noting that evidence “may take on new significance” when

⁶ The director cited to other grounds for the change in the long-standing trend of approvals. The director noted that Brazilian steak houses had grown more prevalent in the restaurant industry, raising questions as to whether the skills and knowledge continue to be special or advanced in the industry. CAR at 362. The director also noted the Ohata Memorandum, clarifying that “[t]o qualify as ‘specialized knowledge,’ the knowledge of the product or the process must be of the sort that is not generally found *in the particular industry*, although it need not be proprietary or unique.” Ohata Memorandum at 2 (emphasis in original).

viewed from the perspective of a consulate general, given its expertise regarding prevailing economic and social conditions).⁷

The director gave the consular returns significant weight, as confirmed in the certified decision. We do not propose, however, that the consular returns dictate the denial of the petitioner's current nonimmigrant visa petition; each visa petition presents a unique adjudication that bears individual evaluation on a case-by-case basis to determine eligibility.

Yet the earlier consular returns raised legitimate questions as to whether those L-1B beneficiaries were required to complete the petitioner's 18 to 24-month training program. Accordingly, those returns gave reason for USCIS to seek additional information, which led to the string of approvals being broken by requests for additional evidence and some subsequent denials. It is appropriate for a director to take action based on his cumulative experience, seeking to avoid the approval, and subsequent consular return, of deficient L-1B visa petitions. *See N.L.R.B. v. Seven-Up Bottling Co. of Miami*, 344 U.S. 344, 349 (1953) ("Cumulative experience' begets understanding and insight by which judgments not objectively demonstrable are validated or qualified or invalidated. The constant process of trial and error, on a wider and fuller scale than a single adversary litigation permits, differentiates perhaps more than anything else the administrative from the judicial process.").

Further, a prior approval does not preclude USCIS from denying a subsequent visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). That is, a prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. *See also Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988); *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). This is particularly pertinent in cases where, such as in the instant matter, USCIS must evaluate the eligibility of the individual beneficiary for the first time, as well as the petitioner's eligibility, before rendering a decision on a petition.

B. The Relevance of Knowledge and Skills Gained Through Culture

Next, we address the relevance of culturally-acquired knowledge to a claim of specialized knowledge. The Court found that our previous decision adopted a categorical bar to considering any cultural aspects of the beneficiary's claimed specialized knowledge. 769 F.3d at 1141-42. The Court found that the exclusion of the beneficiary's cultural knowledge led to a failure to address otherwise relevant evidence.

⁷ In the context of L-1B adjudications, consular returns are instructive for USCIS as they allow immigration officers to verify the overseas business operations. *See* DHS Office of Inspector General, "Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program," OIG-06-022, 13-16 (Jan. 2006), *available in* CAR at 477.

We did not intend to articulate, imply, or apply a categorical exclusion of cultural knowledge. To the extent that our previous decision may have appeared to adopt such a bar, we disavow and withdraw from that part of our prior analysis.⁸ Evidence of knowledge and skills gained through cultural experience may be relevant in a claim of specialized knowledge. During these remanded proceedings, our analysis of the record will not be “infected” by a categorical rule to the contrary. 769 F.3d at 1143.

If a petitioner claims that specialized knowledge is derived in whole or part through cultural upbringing or traditions, we will consider evidence of the knowledge and skills gained through those cultural experiences. Yet cultural knowledge alone may not be sufficient in and of itself to demonstrate specialized knowledge in a given petition. Even if a petitioning ethnic restaurant claims that a “particular style of cooking is ancient and has subtle nuances to it that must be learned, these claims do not generally establish that these skills are so uncommon or complex that other chefs in the industry could not master them within a reasonable period of time.” Ohata Memorandum at 3. Similarly, a chef’s ancillary duties that are grounded in cultural knowledge – such as singing or sharing native folklore – may give rise to specialized knowledge depending on the length and complexity of in-house training required to perform such duties. *Id.* at 2.

Ultimately, as stated by the D.C. Circuit Court of Appeals and in the Ohata Memorandum, the petitioner’s burden is to show through probative evidence that a chef or specialty cook’s claimed specialized knowledge is “(a) uncommon or not generally shared by practitioners in the alien’s field of endeavor; (b) not easily or rapidly acquired, but is gained from significant experience or in-house training, and (c) is necessary and relevant to the successful conduct of the employer’s operations.” *Id.* at 4; *see also* 769 F.3d at 1132. This burden applies regardless of the nature of the claimed knowledge, whether it might be described as cultural, ceremonial, culinary, or technical knowledge. Further, it is the weight and type of evidence presented that establishes whether the petitioner has met its burden and established that a position requires, and a beneficiary possesses, the requisite specialized knowledge.

⁸ We reaffirm and hereby incorporate other parts of our prior analysis. For example, we reaffirm our findings that the expert opinion testimony was not particularly on point and thus of diminished probative value and that the evidence as a whole was insufficient to establish the petitioner’s claim that this beneficiary in particular, and the petitioner’s *churrasqueiro* chefs in general, possess skills and knowledge different from that generally possessed by *churrasqueiro* chefs working in other Brazilian-style *churrascarias* in the United States and Brazil. We determined that the Brazilian *churrascaria* restaurant model, which is prevalent in urban areas in the United States and Brazil, is built around conveying the gaucho culture while cooking and serving *churrasco* in the “espeto corridor” style. We concluded that record evidence was insufficient to demonstrate the petitioner’s claim that it is “authentic” or otherwise differentiated from its competitors in this industry. Further, we determined that the petitioner’s training program, based on the brief overview provided in the record, consists primarily of general cooking methods, food safety and handling skills, customer service skills, and English language skills, and was not shown to impart its workers with knowledge that differs in any meaningful way from that possessed by *churrasqueiro* chefs in other Brazilian *churrascaria* restaurants.

In the initial cover letter submitted with the petition, Mr. [REDACTED] the petitioner's Chief Executive Officer, asserted that the "[t]he special knowledge required for the position is one that involves (i) first-hand, personal knowledge and upbringing in the gaucho lifestyle of [REDACTED] region in Southern Brazil; and (ii) successful completion of an extensive training program by [REDACTED] tenured, experienced Churrasqueiro Chefs." CAR at 98. Accordingly, the question before us is whether the petitioner established that the "first-hand personal knowledge and upbringing in the gaucho lifestyle of the [REDACTED] region," when combined with the successful completion of the petitioner's training program, constitutes specialized knowledge.

1. Evidence of the "Gaucho Lifestyle and Upbringing"

The petitioner avers that the success of its restaurants "relies on the southern-Brazilian native 'gauchos' or '*churrasqueiros*' who cook, prepare and present the meal in a fashion consistent with an authentic gaucho experience." CAR at 95. The petitioner emphasized that the gaucho culture is "special and distinctive, even in Brazil," and that its gauchos originate almost exclusively from the rural regions of the Brazilian state of [REDACTED] "where they are raised and immersed in the distinctive gaucho culture, lifestyle and *churrasco* cooking methods." CAR at 95. The petitioner noted that only approximately four percent of Brazilians have authentic knowledge of the gaucho lifestyle and *churrasco* cooking methods, and that it selects its candidates for the *churrasqueiro* position from this small population.

The petitioner emphasized that the combination of "inherited culinary skills" and completion of the company's training program distinguishes its *churrasqueiro* chefs from any other chefs in the industry. CAR at 99. The petitioner noted that the meat carving skills possessed by its chefs are not taught in the United States outside of *churrascarias* like those of the petitioner, but rather such skills are passed within families from generation to generation in the gaucho culture in the [REDACTED] region of Brazil. CAR at 99. The petitioner considers its authentic *churrasqueiro* chefs to be the primary driver of its business concept, and indicates that it "must maintain strict adherence to the original Southern Brazilian Churrascaria traditions and culture of its food preparation, production and presentation, and its business model [sic] by employing authentic and fully trained Churrasqueiro Chefs such as [the beneficiary]." CAR at 99.

In support of its claims regarding the culture-based specialized knowledge required for the position, the petitioner submitted [REDACTED] historical and cultural information obtained from an Internet resource, *Wikipedia*; Brazilian population statistics obtained from *Wikipedia*;⁹ a 22-page English language document titled "Training And Development Program For Churrasqueiro/Chef"; four expert opinion letters; three affidavits and multiple letters from members of the petitioner's staff, including the CEO; and additional evidence such as the beneficiary's passport and curriculum vitae. We have considered all of the submitted evidence but will cite only to those specific documents that are necessary for resolution of this issue.

⁹ Courts have questioned the reliability of the content from this open, user-edited Internet site. See, e.g., *U.S. v. Lawson*, 677 F.3d 629, 650 (4th Cir. 2012); *Lamilem Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

Of the letters, the one that spoke exclusively of the cultural aspects of the claimed specialized knowledge required for the position was a statement by [REDACTED] founder of the [REDACTED]. In a statement dated August 26, 2004, he comments on the proposed position and its cultural relevance:

[T]he structure and the very success of [the petitioner] is directed to the barbeque chefs that are instructed to serve meats to the guests in the best traditional way of [REDACTED]. They are trained to wear the traditional clothing of the State; talk to the guests about songs and poetry; talk to them, answering the most varied questions. In general, the barbeque chefs explain questions not only regarding to [sic] the meats served; the method for cutting, seasoning and grilling, further providing an historical overview of their clothing, boots, and equipment, of our customs and of the location from where they came and now represent According to my observations, the sharing of cultural elements of [REDACTED] is a special element in the development and integration of the business of [the petitioner]. The authenticity of [the petitioner] is a constant search for the history, culture and cuisine of [REDACTED]; this is a part detached from the training and the employment of each one of the barbecue chefs of its staff.

CAR at 291-92.

The petitioner also submitted a letter from [REDACTED] Associate Dean for Culinary Arts at the [REDACTED] who states he was engaged “to review the position and specialized knowledge training of [REDACTED] ‘Churrasqueiros,’ and compare this position to [the] U.S. culinary education model for similarities and/or differences.” CAR at 283. After concluding that the meat fabrication and cooking methods taught during the course of [REDACTED] 24-month training program are different from those taught within the context of the Culinary Institute’s 22-month degree program and employed in the U.S. “steak house” niche, Mr. [REDACTED] observes that “a Churrasqueiro’s specialized talents are not only a result of the training he receives but a direct reflection of his lifetime of exposure with this style of cooking (churrasco).” CAR at 286. He mentions that “[t]he intangible that must be mentioned is the level of pride in their ‘gaucho’ heritage and culture that is displayed by these Churrasqueiro chefs.” Mr. [REDACTED] nevertheless opines that a person not raised in the rural southern Brazilian culture could possibly learn to perform the *churrasqueiro* duties: “Could someone with a good work ethic and prior industry experience perform the same duties? Possibly, but only after completing [REDACTED] extensive training program.” CAR at 287.

The final opinion letter was authored by [REDACTED], a restaurant industry consultant, who states he was engaged to analyze [REDACTED] business and employment model and the position of *churrasqueiro* chef as they pertain to the company’s competitive advantage in the marketplace. CAR at 273. Mr. [REDACTED] comments that the petitioner’s expansion efforts in the United States rely upon securing sufficient numbers of qualified, Brazilian *churrasqueiro* chefs to set up each restaurant and to train and support locally-hired *churrasqueiro* chefs. In comparing the petitioner to its competitors in the U.S. *churrascaria* market, Mr. [REDACTED] observes that the petitioner’s competitors “did not deliver a comparable, authentic, entertaining dining experience,” but rather an

“Americanized” version of a true Brazilian *churrascaria* experience that relies on “less skilled, costumed employees playing the role of *churrasqueiros* or *gauchos*.” CAR at 275.

Mr. [REDACTED] states that “these skills originate in the gaucho lifestyle of rural southern Brazil, and are passed on from generation to generation.” CAR at 277-78. He notes that “in the United States, these skills can only be learned in *churrascaria* restaurants, and only after extensive personal training by tenured, experienced *churrasqueiro* chefs, at least some of whom themselves grew up in the gaucho culture.” CAR at 278. Mr. [REDACTED] states that each U.S. restaurant should ideally be staffed by at least 40-50 percent (8-10 per restaurant) veteran, Brazilian *churrasqueiro* chefs from the southern rural Brazilian states to ensure that it has a sufficient number of authentic *gauchos* to train the remaining locally-hired staff.

In addition to these outside opinion letters, the petitioner introduced a new argument following the director’s initial denial. Specifically, the petitioner claimed that while it increasingly staffs its restaurants with locally-hired *churrasqueiro* chefs, these workers cannot perform even half of the position’s duties in a satisfactory manner. The petitioner provided a chart on motion comparing the capabilities of “Southern Brazilian Gaucho” and “Non-Gaucho” *churrasqueiro* chefs in terms of performing a list of 18 tasks required of the *churrasqueiro* position. CAR at 443. According to the chart, after completing training, locally-hired “non-Gaucho” chefs are able to fully perform the tasks of selecting meats, properly placing meat on the skewer, seasoning meats for grilling, serving customers throughout the restaurant, and determining the correct serving order in the dining room. The chart indicates that the “non-Gaucho” personnel can also be trained to at least competently perform the duties of visually determining a meat’s doneness level and trimming and preparing cooked meat. The petitioner indicated that these seven tasks can be learned with six to 18 months of training. CAR at 443.

The petitioner indicates that a “non-Gaucho” cannot, however, be trained within a reasonable period of time to simultaneously grill five to six skewers of meat while leaving the grill to perform serving duties, to monitor demand for additional meat based on volume of customers and reservations, to educate new customers on *churrascaria* dining, or to carve and serve all 15 cuts of meat. Finally, the chart indicates that it is not possible to train a local “non-Gaucho” hire to: convey the sense of gaucho-style hospitality present at family events in rural southern Brazil; to educate customers about unique meat cuts and the gaucho culinary and cultural traditions; to provide a “proud but non-intrusive presentation of the skewer/meat tableside”; to set the overall pace of the cooking and serving rhythm in the dining room; to monitor the quality of the overall presentation by the team to ensure authenticity; to train and coach local hires regarding the role and duties of an authentic *churrasqueiro* chef; or to provide the petitioner with the ability to state in new local markets that its *gauchos* are “authentic.” CAR at 443.

On motion, the petitioner also submitted a lengthy affidavit from its Chief Executive Officer, [REDACTED] who provides background on the company’s business model and emphasizes the foreign entity’s practice of exclusively hiring genuine *gauchos* who “learned, as boys, the traditional role that men play preparing and cooking *churrasco* and simultaneously serving and entertaining at large extended-family and

community gatherings characteristic of the rural pampas region of Southern Brazil.” The petitioner also submitted a letter from Ms. [REDACTED] a human resources consultant for the petitioner’s operations in Brazil. Ms. [REDACTED] indicates that only candidates who possess a minimum of ten years *churrasco* experience as a result of their upbringing in rural southern Brazil are hired, and of this small group, that only two-thirds make it through a 90-day probationary period and are selected to enter the 18-to 24-month *churrasqueiro* training program. The petitioner also submitted an affidavit from [REDACTED] the petitioner’s corporate manager for U.S. marketing and media, who states that the petitioner’s brand is “most often defined by its authenticity” and that “in virtually all of its marketing, advertising, promotional and media-related materials, [the petitioner’s] authenticity is the key theme.”

Finally, the petitioner submitted an affidavit from [REDACTED] Regional General Manager for the petitioner’s Western U.S. region. Mr. [REDACTED] explains that it is critical that each restaurant is sufficiently staffed so that several authentic gaucho *churrasqueiros* are always on the restaurant floor to ensure that the restaurant adheres to the tradition, and to train and coach the *churrasqueiros* who did not grow up with the gaucho experience. Mr. [REDACTED] emphasizes that restaurant customers consistently request service from authentic gauchos and that such gauchos are essential to continue to attract and retain customers who are interested in an authentic culinary experience. Finally he states that “the *churrasqueiro* who did not grow up immersed in the tradition of *churrasco* are less effective simply because it is not their life experience.”

Referencing the Puleo Memorandum, the petitioner asserts that the beneficiary’s knowledge is “distinguished by some unusual quality” and “uncommon” due to the small percentage of people in Brazil who are familiar with the rural [REDACTED] traditions, and stated that the knowledge cannot be transferred or taught to others because it “relates specifically to a unique life experience” that one either possesses or does not. The petitioner indicated that this aspect of the beneficiary’s specialized knowledge is inherent to his childhood experiences, upbringing and values, and the cultural traditions of his immediate family and his geographic region and community.

2. Analysis

The petitioner appears to have modified its claims regarding the relative knowledge, skills, and duties of its domestically-hired and Brazilian *churrasqueiros* following the denial of the petition. The petitioner did not initially differentiate its locally-hired chefs from its Brazilian-born chefs in terms of their job titles, their salaries, the duties they perform, or their relative knowledge and skills. As such, when the petitioner claimed that the Brazilian *churrasqueiro* chefs possess specialized knowledge due to a combination of (i) their upbringing in the [REDACTED] region and (ii) the successful completion of an extensive training program, we would anticipate the *churrasqueiro* chefs hired in the United States to require more extensive training or experience to compensate for any skills not acquired as a result of their upbringing outside the [REDACTED] region. Instead and as discussed in greater detail below, the initial record appeared to indicate that the domestically hired staff requires less training than their Brazilian counterparts.

After the director denied the petition, however, the petitioner introduced a new argument intended to distinguish its native Brazilian *churrasqueiros* from their locally-hired colleagues. Specifically, the petitioner claimed for the first time that locally-hired *churrasqueiros* can be trained within a reasonable period of time to successfully perform only seven out of the eighteen duties expected of the position, while the native Brazilian *churrasqueiros* are able to fully perform all duties as “the result of a gaucho childhood spent preparing, cooking, and serving *churrasco* in large gatherings.” CAR at 376. The petitioner explained that local hires could not learn to perform certain duties within a reasonable amount of time and simply could not master certain duties at all. As such, the petitioner stated that it requires genuine gauchos at each U.S. restaurant to perform those duties the locally-hired *churrasqueiros* cannot perform.

Again, however, this new argument and the related evidence create a tension with the initially-presented evidence. Prior to denying the petition, the director asked the petitioner to “[e]xplain how the duties the alien performed abroad and those he will perform in the United States are different or unique from those of other workers employed by the petitioner or other U.S. employees in this type of position.” CAR at 324. In response, the petitioner did not claim that locally-hired *churrasqueiros* can be trained to successfully perform only half of the duties expected of the position or otherwise differentiate the duties of the local hires from those performed by the Brazilian *churrasqueiros*. Rather, the petitioner noted that the [REDACTED] restaurant where the beneficiary would work has eleven *churrasqueiro* chefs and thus asserted: “so clearly there are ‘other employees at the company’s U.S. locations who perform the duties stated in the beneficiary’s proposed position.’” It did not suggest that some or all of its *churrasqueiro* chefs at this location are performing substantially different or fewer duties than the beneficiary would perform. CAR at 345.

In addition, the petitioner pointed to the [REDACTED] letter to claim that, in the United States, the “combined skills” of a *churrasqueiro* chef “can only be learned in *churrascaria* restaurants, and only after extensive personal training by tenured, experienced *churrasqueiro* chefs, at least some of whom themselves grew up in the gaucho culture.” CAR at 347. Thus, the petitioner did not initially claim that locally hired *churrasqueiros* are unable to perform the full range of duties expected of a *churrasqueiro* chef, but instead claimed that they can learn the “combined skills” with “extensive personal training” provided by experienced domestic and Brazilian chefs.¹⁰

¹⁰ In the RFE response, the petitioner did point to Mr. [REDACTED] statement that “[e]xpensive specialty cuts, such as picana and filet mignon, may take up to two years for a *churrasqueiro* chef to become qualified in roasting and carving, and is assigned to only the most experienced Brazilian *churrasqueiro* chefs.” CAR at 346. This assertion, however, is not the equivalent of the later claim that locally-hired *churrasqueiros* can be trained within a reasonable period of time to perform only seven out of the eighteen duties expected of the position.

Moreover, and as explained in our prior decision, the otherwise extensive record lacks sufficient detail and supporting evidence to explain and substantiate why it may take up to two years to become qualified to roast and carve expensive specialty cuts of meat. The petitioner provided only a general overview of the training program, with few details

Despite the new claim alleging a skills-based dichotomy between the locally-hired and native Brazilian *churrasqueiro* chefs, we note that prior to the denial of the petition, the evidence suggested that the petitioner's local hires perform the same duties as Brazilian *churrasqueiro* chefs after completing the petitioner's training program. That is, the petitioner submitted expert letters indicating that the duties of the *churrasqueiro* chef can be learned through completion of the petitioner's training program as described at the time of filing, and that all of the *churrasqueiro* chefs in a given restaurant work as a team and interact equally with guests, thus suggesting that they are all fully performing the duties of the position.

In fact, the initial evidence suggested that the local hires may require a shorter period of training, because a significant portion of the training provided to Brazilian hires is training in the English language. While the petitioner avers that the Brazilian *churrasqueiro* chef training demands 18 to 24 months of formal classroom and on the job training, Mr. [REDACTED] described the domestic training as "passed on personally . . . one on one, verbally, and physically as trainers, mentors, and role models . . . between all the Brazilian trained *churrasqueiro* chefs, working as team, and each trainee *over a 6-18 month period* . . . as has been done in Brazilian *churrascarias* for generations." CAR at 279 (emphasis added, ellipses in original).¹¹

Overall, the evidence submitted prior to the initial denial of the petition conveyed that the petitioner's Brazilian and locally-hired *churrasqueiros* both undergo training and perform the same duties. Notably, Mr. [REDACTED] indicated that he interviewed both Brazilian and locally-hired chefs and he drew no distinctions between these two classes of *churrasqueiro* beyond noting that the Brazilian employees are more likely to complete the training program and remain with the company for a period of years. Otherwise, he indicated that based on his observations, all 10-12 *churrasqueiros* present at the petitioner's restaurants at any given

regarding the course materials, content, or methodology used to deliver the program. As explained above, we again affirm these findings in our prior decision and hereby incorporate them by reference into this decision.

¹¹ Expressed as a mathematical formula, if all [REDACTED] *churrasqueiro* chefs possessed specialized knowledge, we would describe the petitioner's assertions regarding the Brazilian chefs as: cultural experience + 18-24 months training = specialized knowledge. Absent evidence to the contrary, as the non-Gaicho, locally hired chefs will lack the cultural component of an upbringing in the gaicho culture, we would expect their equation to compensate with greater training or experience. Instead, as presented in the petitioner's evidence of record, the equation for local hires appears to be: 6-18 months training = specialized knowledge.

Mr. [REDACTED] testimony, however, further blurs the relevant distinction between Brazilian and locally-hired chef training when he later claims that "[o]nly 30-40% of all trainees make it through the initial four to six month training period to become novice *churrasqueiro* chefs" after which they are "continually trained and mentored by veteran Brazilian *churrasqueiro* chefs" for twelve months. *Id.* Under this formulation, some U.S. *churrasqueiro* chefs may be fully trained in 16 months, not 18 months.

dinner service are expected to work as a team and interact with each guest individually; he did not indicate that the locally-hired chefs were limited in their abilities to perform these duties in any way. His statements also conveyed that experienced locally-hired *churrasqueiros* may participate in training new *churrasqueiros*.

In addition, the petitioner and experts provided letters emphasizing “authenticity” as the primary impetus for the petitioner to staff all of its U.S. restaurants with at least some percentage of native southern Brazilian chefs, but the evidence of record did not convey how these employees, as a result of their lifestyle, culture and upbringing in the [REDACTED] region, coupled with completion of the petitioner’s required training, possess knowledge or skills that cannot be imparted within a reasonable period of time to other locally-hired *churrasqueiros* working in the petitioner’s restaurants or that is different or uncommon compared to that generally possessed by *churrasqueiros* working in the United States.¹² Mr. [REDACTED] conveyed that the petitioner’s chefs are trained to talk to the guests about traditional clothing, poems and songs, answer questions regarding the meat and preparation methods, and provide a historical overview of their equipment, customs, and location. Yet the petitioner did not establish in the record *why* locally-hired chefs could not be trained to answer similar questions or indicate that this cultural information is particularly complex, such that the knowledge cannot be transferred within a reasonable period of time. Thus, although the petitioner now argues that the beneficiary possesses, and his foreign and U.S. positions require, specialized knowledge because locally-hired chefs are unable to learn some of the required duties within a reasonable period of time, the evidence submitted before the director denied the petition did not adequately establish that the Brazilian chefs, as a matter of fact, perform duties that the locally-hired chefs do not perform, or cannot learn to perform, within a reasonable period of time.

Even with the evolving assertions on certification, it remains unclear what special or advanced knowledge the beneficiary possesses, or the U.S. position requires, that cannot be taught or imparted to others within a reasonable amount of time.¹³ The record reflects that, although the petitioner states that domestically-hired *churrasqueiros* cannot perform some of the 18 discrete duties of a *churrasqueiro* with training, Mr. [REDACTED] affidavit indicates that the non-Brazilian staff is nevertheless required to perform at least several of these duties. Specifically, he states that “local hires are not as effective as [REDACTED] genuine gauchos in educating

¹² The petitioner does not challenge our prior conclusion that the relevant industry for comparison purposes is the *churrascaria* industry.

¹³ Given that the petitioner claims that the position abroad was also a specialized knowledge position, the same question applies in considering whether the beneficiary’s employment in Brazil also involved specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(iv) (requiring, inter alia, “[e]vidence that the alien’s prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge”). That is, we must determine whether it is also the case that the claimed specialized knowledge can be taught or imparted to other locally-hired workers in Brazil within a reasonable period of time. While the petitioner claims that all *churrasqueiros* it recruits in Brazil are from the [REDACTED] region and that this region comprises four percent of Brazil’s total population, the petitioner did not adduce sufficient evidence to establish that the relevant knowledge is specialized *within Brazil*.

guests about gaucho culture, traditions, and cuisine” and must be taught to “memorize set answers to set questions,” but he does not state that they cannot or do not perform these duties. CAR at 439. The petitioner has not established why the domestically hired employees are unable to learn to educate new customers on the “style, flow and pace of churrascaria dining” as the petitioner has not explained what this duty would entail beyond providing diners with basic information regarding how the dinner service is carried out in the restaurant. CAR at 443. The petitioner also indicates that locally-hired *churrasqueiros* can be trained to serve all customers in the restaurant, but simultaneously states that they cannot be trained to safely present and serve skewers of meat tableside, which is the only serving method used in its restaurants.

Although the petitioner indicates that many of the skills that cannot be learned by the domestically-hired employees are culturally-acquired and intuitive skills, the record indicates that even employees who were hired in Brazil and grew up in the gaucho culture must complete 18-24 months of training, including gaucho cultural training. The petitioner has not adequately shown what the training entails or the knowledge acquired as a result. Looking to the 22-page document titled “Training and Development Program for Churrasqueiro/Chef,” the petitioner described the training program as encompassing four modules: General, Specialist, Cultural, and Language. CAR at 255. As we observed in our previous decision, the petitioner’s training program, based on the brief overview provided in the record, consists primarily of general cooking methods, food safety and handling skills, customer service skills, and English language skills. We cannot discern how the training program imparts its workers with knowledge that differs meaningfully from that possessed by *churrasqueiro* chefs in other *churrascaria* restaurants.

For instance, the “Cultural” portion of the petitioner’s training program contains few details regarding the specific content or time allocated to this instruction. The document only provides that cultural training “takes place during the 1st and 2nd semesters according [sic] as defined by the program of each training location.” CAR at 257. The document does describe a cultural portion of the program that requires all four semesters, but that section does not relate to Gaucho culture but rather “General Culture and Current Events,” including the history of the “employment city,” presumably in the United States, plus local restaurants and “places of tourism and cultural interest.” CAR at 257-58. By comparison, the “Language” portion of the training program describes the course content in more detail and states that it requires four semesters or two years to complete the course. CAR at 258. And the document breaks down the “Specialist” module into its subcomponents, describing the “Operation of a *Churrasqueira*” as requiring all four semesters and providing a detailed, two-page syllabus for teaching the work routines of the *churrasqueiro* restaurant. The petitioner provided no comparable details for the critical cultural component of the training program.

The training materials provided do not include detailed information regarding the content of and time allocated to training on culture. We conclude that the petitioner has not established that the claimed specialized knowledge, in particular the cultural aspects of that knowledge, is so complex that other chefs in the industry could not master such knowledge within a reasonable period of time. See Ohata Memorandum at 2.

In addition, the petitioner did not establish what specific informational knowledge, experience, and skills are conveyed through the native Brazilians' lifestyle and upbringing in the rural [REDACTED] region that cannot also be conveyed through the company's training program within a reasonable period of time. Again, the cultural traditions discussed by the petitioner and in the provided expert opinions focus primarily on food preparation and cooking techniques, which the petitioner generally states are passed on from generation to generation in rural southern Brazil.¹⁴ The expert letters convey that the primary role of the *churrasqueiro* is to prepare, cook, and serve meat according to a traditional technique that is common to *churrascaria* restaurants. According to the expert opinion letters submitted for the initial adjudication, this cultural-based knowledge and these skills can also possibly be learned by someone with "a good work ethic and prior industry experience" through completion of the petitioner's training program. CAR at 287.

The 2004 Ohata Memorandum specifically provides guidance for interpreting specialized knowledge in L-1B cases involving chefs and specialty cooks. In that memorandum, the agency clarified that chefs and specialty cooks are generally not specialized knowledge positions, and that knowledge of a restaurant's recipes and food preparation techniques generally does not constitute specialized knowledge, even if those techniques are nuanced, centuries old, and specific to a particular ethnic cuisine. Ohata Memorandum at 1-3. Here, the petitioner indicates that the traditional gaucho method of cooking and *churrasco* include atypical butchering methods, cooking meat on skewers over an open flame, handling multiple types of meat at one time, and testing meat temperatures visually. The petitioner did not establish how its ethnic Brazilian cuisine falls outside the example provided in the Ohata Memorandum relating to recipes and food preparation techniques.

In short, the petitioner did not establish that the knowledge of *churrasco* cooking and serving techniques, though specific to their culture, qualifies as special or advanced. The petitioner has not specifically identified what skills and knowledge are conveyed through an upbringing in the rural southern Brazil lifestyle beyond "preparing and cooking churrasco and simultaneously serving and entertaining" at large gatherings. CAR at 435. As we concluded in our prior decision, the knowledge required to perform these duties is common among *churrasqueiro* chefs working in the *churrascaria* industry, regardless of their national origin. Locally-hired workers in the petitioning company and in the petitioner's particular industry can and do learn to prepare, cook, and serve *churrasco*, within a reasonable period of time, and to represent the gaucho culture to restaurant guests. The Puleo Memorandum specifically disallows a test of the U.S. labor market in making a specialized knowledge determination. However, the memorandum provides that USCIS "must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry." Puleo Memorandum at 3. In addition, "[t]o qualify as 'specialized knowledge,' the knowledge of the product

¹⁴ As with the lack of detail in the training content on culture, the petitioner's statements that each *churrasqueiro* serves hundreds of diners during a shift tends to call into question whether these employees are expected to provide a substantive cultural or historical presentation as part of their ancillary duties that would require informational knowledge obtained only through membership in that subculture of Brazil or training that would take an unreasonable period of time.

or the process must be of the sort that is not generally found *in the particular industry*.” Ohata Memorandum at 2 (emphasis in original). Here, the petitioner has not shown that the knowledge required to perform the cooking and ancillary duties of the position is not generally found in the industry.

The petitioner states that one “duty” that is fully performed by the Brazilian *churrasqueiros* is “the ability to say in local markets that [redacted] gauchos are ‘authentic.’” The petitioner indicates that its local hires “cannot be trained to [redacted] standards” in this regard. While it is certainly true that a locally-hired U.S. worker cannot be presented in marketing materials as an authentic gaucho, it is unclear why this characteristic constitutes a “duty” that would require any training. In our prior decision, we found that the petitioner had not distinguished the knowledge possessed by its gauchos from that generally possessed by *churrasqueiro* chefs working in the petitioner’s industry, observing that the assertion was supported only by Mr. [redacted] determination that the petitioner’s competitors — [redacted], [redacted], and [redacted] — offer an unauthentic “Americanized” *churrascaria* experience. CAR at 275-76. Mr. [redacted] did not explain the term “Americanized” or identify any specific differences between the knowledge or duties of *churrasqueiros* in “Americanized” *churrascarias* and those of authentic Brazilian *churrasqueiros*, although his letter does speak to the competitors’ use of “costumed employees playing the role of *churrasqueiros*.”

While there is no test of the U.S. labor market to determine specialized knowledge, the Puleo Memorandum states that officers “must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Puleo Memorandum at 3. The record contains no other evidence comparing the knowledge of the petitioner’s *churrasqueiros* to that of other Brazilian *churrascaria* restaurants’ *churrasqueiros*; the petitioner has not established that “the knowledge is different from that generally held by persons in the particular profession and industry.” Ohata Memorandum at 2, footnote 1. For example, tableside service - one of the claimed authentic duties the petitioner presents - is a common ancillary duty among *churrasqueiro* chefs in the *churrascaria* industry. CAR at 278. Therefore, while the knowledge required to perform the *churrasqueiro* duties is of some complexity, it has not been shown to be different from what is generally found in the *churrascaria* industry or to be “truly specialized.” Puleo Memorandum at 3.

The petitioner mentions the ability to “convey the sense of gaucho style hospitality” as one ancillary duty that local hires cannot perform to company standards, but the petitioner has not identified or documented the existence of a distinct “sense of hospitality” specific to the rural southern Brazilian culture, nor has it explained how conveying a specific sense of hospitality amounts or contributes to the type of knowledge or skill that could be considered a source of specialized knowledge. Similar to the Court’s observation regarding the “mere *status* of being from a particular region or culture and any ‘authenticity’ derived from that status,” the petitioner has not explained how an undefined and undocumented cultural characteristic such as hospitality constitutes “knowledge” as that term is used within sections 101(a)(15)(L) and 214(c)(2)(B) of the Act. *See* 769 F.3d at 1141 (emphasis in original). We are not concluding here that it does not or cannot constitute “knowledge”; rather, we find that the petitioner has not established the matter in the instant record.

We conclude that the knowledge and skills gained through cultural experience of a gaucho upbringing may contribute to a finding of specialized knowledge. In this specific case, however, the record does not demonstrate that the beneficiary possesses specialized knowledge based on the combination of his cultural background and his claimed completion of the petitioner's training program. Section 214(c)(2)(B) of the Act defines specialized knowledge, in part, as special knowledge of a company's product and its application in international markets. In order to qualify as "special," the beneficiary's knowledge must be different from that generally found in the particular industry. While the knowledge does not have to be unique or proprietary, it should be different or uncommon. Puleo Memorandum at 1. Here, for the reasons discussed above, the record does not establish that the beneficiary possesses, or that the positions require, knowledge that is different from what is generally possessed by similarly employed *churrasqueiro* chefs working for other *churrascarias* in the United States and Brazil.

The petitioner also suggests that its native Brazilian *churrasqueiros*, including the beneficiary, possess advanced knowledge of the company's processes and procedures for conveying an "authentic gaucho experience," and therefore meet the "advanced level of knowledge" component of the specialized knowledge definition at section 214(c)(2)(B) of the Act. The record indicates that the *churrasqueiro* chef positions occupied by Brazilians and local hires share the same job title, have the same salaries, and require the same or similar duties, but it also indicates the locally hired chefs may require equal, similar, or even less training than their Brazilian colleagues. We cannot ascertain with sufficient certainty the relative training requirements in the record before us. Although advanced knowledge need not be narrowly held throughout the company, the petitioner has not shown in this record that the beneficiary possesses, or that his position requires, knowledge that is sufficiently developed or complex to constitute advanced knowledge of the company's processes and procedures.

We are left to conclude that, for purposes of authenticity, the petitioner seeks the beneficiary for his "membership" in the class of approximately four percent of Brazilians with authentic knowledge of the gaucho lifestyle and *churrasco* cooking methods. Accordingly, for the reasons discussed herein and in our prior decision, the petitioner has not demonstrated that the beneficiary possesses knowledge and skills as a result of his cultural background and life experience, in conjunction with the petitioner's training program, that is either "special" or "advanced" in accordance with the statutory and regulatory definitions or that the foreign or U.S. positions require such knowledge.

C. Evidence of the Beneficiary's Training and Work Experience in Brazil

The third issue for consideration is our review of the evidence and the resulting factual conclusions regarding the beneficiary's work experience and training in Brazil. *See* 769 F.3d at 1146-48. The petitioner is required by regulation to provide evidence that the beneficiary has at least one continuous year of full-time employment abroad in a position that was managerial, executive, or involved specialized knowledge and that the beneficiary's prior education, training and employment qualifies him to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iii)-(iv).

Although the petitioner claims that its Brazilian employees must have 18 to 24 months of training prior to being promoted to *churrasqueiro* chefs, the petitioner did not specify the dates or duration of the beneficiary's training or indicate when he was promoted to the *churrasqueiro* chef position. Nor did the petitioner submit such evidence as contemporaneous business records or other contemporaneous evidence sufficient to establish its claims regarding the beneficiary's training and work experience in Brazil. At the time of filing, the petitioner generally declared that the specialized knowledge required for the *churrasqueiro* chef position is gained, in significant part, through completion of the company's 18- to 24-month training and development program. CAR at 98. According to the provided program overview, this involves classroom courses, on-the-job observation and supervision, and regular assessments prior to graduation or promotion to the *churrasqueiro* position. The petitioner indicated that the training is progressive and encompasses training that would prepare employees for lower-level positions such as "*churrasqueira* assistant." CAR at 253. The petitioner also stated that it requires all candidates for transfer to the United States to complete an additional year of experience with one of its Brazilian restaurants after successfully completing the *churrasqueiro* chef training.¹⁵

With respect to the beneficiary's experience and qualifications, the petitioner asserted that the beneficiary had served as a *churrasqueiro* chef since the date of his initial hire on June 27, 2006. See Letter from [REDACTED] Corporate Headquarters, dated January 21, 2010, CAR at 96, 101. If the beneficiary immediately assumed the duties of a *churrasqueiro* chef when originally hired, this fact would undermine the petitioner's claim that all its Brazilian employees, including those who have worked as *churrasqueiro* chefs for other restaurants in Brazil, are promoted to this position only after completion of the 18- to 24-month training program. CAR at 247.

As evidence of the beneficiary's continuous year of employment in Brazil, the petitioner provided copies of the beneficiary's monthly payroll statements for 2009, the one-year period prior to filing the petition, which identified his position title as "*garcon churras*" and not as "*churrasqueiro* chef." CAR at 309-320. The petitioner also asserted that the beneficiary has a "highly developed level of knowledge of the [REDACTED] business concept" due to his "successful completion of the [REDACTED] training program." CAR at 102.

In the certified decision, the director translated "*garcon churras*" as "waiter" and noted that the petitioner had submitted no evidence to establish that this experience was "substantially similar" to that of a *churrasqueiro* chef in a [REDACTED] restaurant. CAR at 714. During our review on certification, the petitioner did not contest the director's translation of "*garcon churras*" as "waiter" or otherwise acknowledge or attempt to reconcile the incongruous job titles. Without clarification, we were unable to determine whether the *garcon churras* position identified on the beneficiary's payroll statements is a lower-level position or whether it is equivalent to the *churrasqueiro* position.

¹⁵ The petitioner's requirement of one year work experience prior to transfer tracks the regulatory requirement. See 8 C.F.R. § 214.2(l)(3)(iii)-(iv).

The unresolved discrepancy created by the *garcon churras* job title is significant because the petitioner's claim to eligibility for this visa classification is predicated, in part, on the beneficiary's standing as a fully trained *churrasqueiro* chef with one year of post-training experience in a position involving the claimed specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(iv). According to the payroll statements, the beneficiary was a *garcon churras* for the year immediately prior to the filing of the petition. The petitioner has not claimed that any other position in its restaurants requires 18 to 24 months of training, and states that "the L-1B visa petitions are reserved only for the Churrasqueiro Chefs." CAR at 105. In response to the RFE, the petitioner emphasized that its *churrasqueiros* are "not classified as Kitchen Staff or Servers, but rather, *are their own classification* of specialized employee - *one that is not interchangeable* with the rest of the [REDACTED] restaurant employee population." CAR at 344 (emphasis added); see also CAR at 337 (providing an organizational chart for the beneficiary's restaurant).

After noting the incongruous *garcon churras* job title, the director found that the petitioner submitted no evidence, other than "unsupported statements," to establish that the beneficiary "has in fact completed the petitioner's training program [and] how long that training might have taken." Absent detailed evidence of the beneficiary's employment and training abroad, the director concluded that he was unable to determine whether the beneficiary possessed the claimed knowledge. CAR at 714-15. We similarly concluded that the record did not establish the beneficiary's completion of the purported mandatory training program or that such training was followed by one year of employment as a *churrasqueiro* chef in the foreign entity's restaurants. CAR at 41.

The Court found that our conclusion that the petitioner did not meet its burden to establish that the beneficiary completed the 18- to 24-month training program was not supported by substantial evidence. 769 F.3d at 1146-47. Specifically, the Court found that our prior decision did not weigh the sworn affidavit from [REDACTED] the letter from Ms. [REDACTED] or the beneficiary's curriculum vitae, all of which were submitted in support of the petitioner's brief on motion, and re-submitted on certification after the director found this evidence insufficient to establish that the beneficiary met the petitioner's stated minimum training and experience requirements for transfer to the United States in an L-1B specialized knowledge capacity.

Upon careful review, we affirm our previous finding that the petitioner has not established by a preponderance of the evidence that the beneficiary completed the training program or that such training was followed by one year of employment as a *churrasqueiro* chef in the foreign entity's restaurants. We duly considered the letters and affidavits of record but conclude that those materials did not suffice to satisfy the petitioner's burden of proof. Since 2010, the petitioner has been apprised of the agency's concern regarding the lack of consistent evidence to demonstrate the beneficiary's qualifications under the petitioner's own training and experience protocols. As discussed below, the petitioner has not submitted sufficient evidence to establish the factual assertion of the beneficiary's completion of its required 18- to 24-month training program. Moreover, the petitioner claims that its Brazilian employees must complete this training program in order to be promoted to the position of *churrasqueiro* chef, but, at the same time, stated that the beneficiary

was hired as a *churrasqueiro* chef and has been serving in this position for his entire tenure with its Brazilian operations. None of the evidence submitted directly addresses this unexplained discrepancy. A petitioner must present competent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). To meet this burden, the petitioner must prove by a preponderance of evidence that it and the beneficiary are qualified for that benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The “preponderance of the evidence” standard requires that the evidence demonstrate that the petitioner’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Id.* (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, 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.

To establish the beneficiary’s completion of the company’s 18- to 24-month training program, the petitioner submitted: (1) an affidavit of its Chief Executive Officer; (2) the beneficiary’s curriculum vitae, stating generally that he graduated and specialized as a waiter *churrasqueiro*; and (3) a letter from a Brazilian nutritionist who opines on the beneficiary’s qualifications.

In his affidavit, the petitioner’s CEO attests generally to the beneficiary’s completion of the training program. As the Court indicates, this assertion is uncontroverted, but it is also uncorroborated in the record. Specifically, Mr. [REDACTED] stated that the beneficiary “has well more than two years’ experience as a *churrasqueiro* in [the company’s] Brazilian restaurants . . . and completed the training program in Brazil.” CAR at 441. Here, the petitioner’s CEO repeated the claim that the beneficiary was employed as a *churrasqueiro* for his entire tenure with the petitioner’s Brazilian operations, prior to completing the training and development program for the position. The information provided in the affidavit provides no specificity with respect to the beneficiary’s training, such as dates confirming that he did in fact complete at least 18 months of training. In addition, the CEO’s statement conflicts with the beneficiary’s payroll records, which show that he was not employed as a *churrasqueiro* chef, but rather as a *garcon churros*, as recently as December 2009. Mr. [REDACTED] does not indicate that he reviewed the foreign entity’s personnel or training records or otherwise identify the source of his knowledge. Further, the petitioner did not offer, in support of the affidavit, historical corroborating evidence, such as contemporaneous business records of the beneficiary’s completion of the training program and of his promotion to the *churrasqueiro* chef position.¹⁶

¹⁶ Corroboration is especially important here, as other evidence in the record indicates that the petitioner’s organization will not employ an individual as a “*churrasqueiro* chef” until after the requisite training has been completed. Further

Similarly, the beneficiary's curriculum vitae ("CV") has limited probative value as evidence of his completion of the petitioner's 18- to 24-month training program or his subsequent employment in the *churrasqueiro* chef position. The CV indicates that the beneficiary held the position of "waiter *churrasqueiro*," rather than "*churrasqueiro* chef," since joining the company's Brazilian operations. This information is inconsistent with the petitioner's statements regarding the beneficiary's job title; the petitioner has consistently stated that its *churrasqueiro* chefs occupy a unique restaurant role and are not considered waiters, servers, or kitchen staff. CAR at 105, 337, 344. Additionally, the CV contains no direct reference to the petitioner's 18- to 24-month training program. It indicates instead that the beneficiary currently works at one of the petitioner's restaurants in Sao Paulo "where he graduated and specialized as waiter *churrasqueiro*" but also indicates that he worked as a waiter *churrasqueiro* for a restaurant owned by the petitioner prior to his current assignment. CAR at 521. Absent such evidence as contemporaneous business records, this statement in the beneficiary's CV may support a finding that the beneficiary received training as a waiter *churrasqueiro*, but not as a *churrasqueiro* chef. As a result, the information provided in the CV mirrors the deficiencies already discussed with respect to the beneficiary's position title within the foreign company and similarly lacks specificity regarding the dates and duration of his training.

Next, the letter from Ms. [REDACTED], a Brazilian nutritionist, also lacks probative value as evidence of the beneficiary's completion of the training program and subsequent employment as a *churrasqueiro* chef. She indicates that she reviewed the beneficiary's CV and interviewed the beneficiary. She does not elaborate on the subject matter of the interview. She states that the beneficiary "possesses the cultural background and restaurant skills necessary to fulfill the position of Churrasqueiro," but she makes no assertions regarding the beneficiary's completion of the petitioner's training program, his employment history, or his position titles with the foreign entity. CAR at 520. In addition, her statement does not distinguish whether she thinks the beneficiary is qualified to perform the duties of a waiter *churrasqueiro* or a *churrasqueiro* chef but, presumably, it would be the former as her assessment is based on the beneficiary's CV. Accordingly, we find that this letter lacks relevance as evidence of the beneficiary's completion of the foreign entity's training program and does not resolve ambiguities in the record as to whether or when the beneficiary actually assumed the position of *churrasqueiro* chef.

A petitioner's statements or assertions should be supported by documentary evidence. See *Matter of Soffici*, 22 I&N Dec. 158, 164-65 (Comm'r 1998) (finding the petitioner's claims regarding its source of funds were insufficient as they were not supported by documentation, such as a sales contract or deed establishing

and as discussed above, the beneficiary's monthly payroll statements for the one-year period prior to filing the petition identified his position title as "*garcon churras*" and not as "*churrasqueiro* chef." CAR at 309-320. The petitioner has not resolved these discrepancies with probative evidence, and thus we are unable to identify the specific job duties he performed or when he performed them. Accordingly, we find that the petitioner has not demonstrated that the beneficiary's employment abroad involved specialized knowledge for the requisite one-year period. See 8 C.F.R. § 214.2(1)(3)(iv).

ownership and price). Moreover, USCIS may assign less weight to testimonial evidence, such as affidavits, particularly when they are contradicted by other evidence in the record of proceeding. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 194 (Reg'l Comm'r 1972)). Here, the petitioner asserts that it goes to great lengths to ensure that its *churrasqueiro* chefs are properly trained, but it submitted insufficient evidence, to corroborate its assertion that the beneficiary completed the training program.

Therefore, after considering the testimonial and all of the other evidence presented, we find that the evidence does not overcome the ambiguities in the record regarding the position the beneficiary held during the three years preceding the filing of the petition, or address the deficiencies in the record regarding the minimum of 18 months of training that are required prior to promotion to the position of *churrasqueiro* chef.

Additionally, while affidavits are always acceptable as a form of evidence, the weight they are to be afforded depends on the facts of each case. Under the facts presented here, where the petitioner has asserted that *all* its *churrasqueiro* chefs are required to undergo a formal, extensive, company-sponsored training program, its failure to present specific evidence documenting such training, in light of the ambiguities in the record, weakens the probative value of the affidavits submitted.

The L-1B regulations specifically require that a petition be substantiated by evidence that the beneficiary was employed abroad in a position that was managerial, executive, or involved specialized knowledge and evidence that the beneficiary's prior education, training and employment qualifies him to perform the intended services in the United States. *See* 8 C.F.R. § 214.2(l)(3)(ii)-(iv). In the present matter, where the petitioner has consistently identified an 18- to 24-month training period followed by one year of employment as a *churrasqueiro* chef as the minimum requirements for transfer to the United States in a specialized knowledge capacity, persuasive evidence of the beneficiary's completion of the training program might include human resources or personnel records issued contemporaneous with its completion, copies of documentation reflecting personnel actions, training certificates, or any other documentary evidence which would place the beneficiary in the training program during a specific 18- to 24-month time period and document his promotion to the position of *churrasqueiro* chef on a specific date. Such evidence may also serve to corroborate the length and complexity of the training.

At a minimum, information regarding the specific dates of the beneficiary's training and the date on which he was promoted to the position of *churrasqueiro* chef is relevant in determining whether he meets the petitioner's stated minimum training and experience requirements for transfer to the U.S.-based *churrasqueiro* position. Rather than submitting contemporaneous documentary evidence or detailed information regarding the beneficiary's training and experience, the petitioner has opted to submit affidavits and other secondary evidence such as the beneficiary's CV which contain bare assertions that the beneficiary completed the training program on some unspecified date and assertions that he worked for the foreign entity as a *churrasqueiro* chef prior to completing the required training for this position. Therefore, while we have weighed the submitted affidavit evidence, it is not sufficient in this case to establish when or if this beneficiary actually completed the training.

Likewise, persuasive evidence of the beneficiary's minimum one year of employment as a *churrasqueiro* chef might include personnel records reflecting that he held this specific job title for at least 12 months subsequent to the date on which he completed his training, a date which has not been identified, and for at least 12 months prior to the filing of the petition. As discussed, the record does contain contemporaneously-issued personnel records which indicate that the beneficiary held the job title of "garcon churras" from January 2009 until December 2009. However, the petitioner indicates that the *churrasqueiro* chef position is distinct from any other restaurant position, and the record does not establish that a "garcon churras" and a *churrasqueiro* chef are in fact the same position. In light of the submitted payroll records indicating that he was employed in a different position as recently as two months before the petition was filed in February 2010, the petitioner's assertions that the beneficiary has held the *churrasqueiro* chef position for more than one year are not sufficient to meet its burden of proof.

While we have weighed the submitted evidence, it is not sufficient in this case to establish when or if this beneficiary actually completed the petitioner's required training. The petitioner indicates that the completion of its training program, followed by one year of additional experience as a *churrasqueiro* chef abroad, are its minimum requirements before it will consider an employee for an L-1B intracompany transferee position. For the reasons stated above, however, we conclude that the petitioner has not established by a preponderance of the evidence that the beneficiary completed the training program or acquired the requisite work experience abroad in a specialized knowledge position.

D. Consideration of Economic Inconvenience

Last, we consider the extent to which the petitioner would face economic inconvenience if it is unable to transfer this beneficiary to the United States. The Court found that, while our previous decision did not ignore economic inconvenience considerations altogether, our consideration of this factor excluded the decade of training and experience the beneficiary gained during his upbringing in the gaucho tradition as well as the petitioner's claims that much of this culturally-rooted knowledge cannot be transferred to locally-hired staff. 769 F.3d at 1143. The Court remanded this issue to us for further consideration in conjunction with our review of the role of the beneficiary's culturally acquired knowledge and skills.

The concept of economic inconvenience as an indicator of specialized knowledge arose first in the Puleo memorandum: "The common theme, which runs through these examples is that the knowledge which the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm. The knowledge is not generally known and is of some complexity." Puleo Memorandum at 3. The 2004 Ohata Memo also commented on the need to analyze whether "the petitioning entity would suffer economic inconvenience or disruption to its U.S. or foreign-based operations if it had to hire someone other than the particular overseas employee on whose behalf the petition was filed." Ohata Memorandum at 1-2.

As observed by the Court, a “natural prox[y] for economic inconvenience” is “the amount of in-house training a company’s employees would have to receive to acquire the knowledge in question.” 769 F.3d at 1142. While economic inconvenience is not explicitly discussed in the relevant statutes or regulations, the agency has recognized, as a matter of policy, that economic inconvenience is a relevant factor that may be instructive or indicative of whether knowledge is special or advanced. Economic inconvenience is not the only relevant factor; the petitioner must also demonstrate “the complexity of the knowledge and the fact that the knowledge is not generally found in the industry.” Ohata Memorandum at 1. However, merely stating that a beneficiary’s knowledge is difficult to impart to others will not, in and of itself, establish a potential loss such that we could conclude that the beneficiary possesses specialized knowledge. Like all issues relating to specialized knowledge claims, it is the weight and type of evidence that establishes whether the petitioner will suffer economic inconvenience.

The petitioner has consistently claimed that the *churrasqueiro* chef position is the most critical in its restaurants and the only customer-facing position that requires specialized knowledge. However, as previously discussed, the petitioner has not established by a preponderance of the evidence that there is, in fact, a dichotomy between the knowledge, skills, and duties of locally-hired *churrasqueiro* chefs and Brazilian *churrasqueiro* chefs, with only the latter being deemed to possess specialized knowledge. Instead, the evidence indicates that the petitioner staffs its restaurants primarily with locally-hired *churrasqueiro* chefs. The petitioner indicated that it has 41 Brazilian *churrasqueiro* chefs out of a total of 160 to 192 *churrasqueiro* chefs on staff at its 16 restaurants in the United States. These figures suggest that each restaurant employs no more than two or three Brazilian *churrasqueiro* chefs out of a total cadre of 10 to 12 *churrasqueiro* chefs. The petitioner has never stated that the two classes of employees possess different job titles or earn different salaries, and initially, did not indicate that the local hires and Brazilian *churrasqueiro* chefs perform different duties. Therefore, while the petitioner submitted a chart subsequent to the denial of the petition indicating that the domestically-hired *churrasqueiro* chefs can perform only seven of the 18 responsibilities required of the position, it did not reconcile this new information with the evidence it submitted previously, which suggested few or no clear differences between locally-hired and Brazilian *churrasqueiro* chefs in terms of their ability to perform the duties of the position.

Prior to the denial of the petition, the petitioner compared the retention rates of locally-hired and Brazilian *churrasqueiro* chefs. The petitioner claimed that locally-hired *churrasqueiro* chefs with no previous experience have a nearly 70% turnover rate, with an average tenure of less than 1.3 years, compared to an average tenure of six years for Brazilian *churrasqueiro* chefs. CAR at 280. While higher attrition of local hires may require additional investment in hiring and training because of future rounds of staffing, these costs do not relate to the difficulty of being able to impart the specialized knowledge to locally-hired staff, who can perform the beneficiary’s duties after successful training.¹⁷

¹⁷ The petitioner does not provide comparative statistics on the attrition rate of restaurant workers in the general population. It may be that the attrition rate of the locally-hired workers is not unusually high, but rather that the attrition

Further, the record does reflect that the petitioner allocates substantial funds to training of both its Brazilian and locally-hired staff. Specifically, Mr. [REDACTED] indicated that the petitioner spends \$40,000 to \$45,000 to train and develop each Brazilian *churrasqueiro* chef, while Mr. [REDACTED] stated that “the training cost for the opening of a new [REDACTED] restaurant typically ranges \$100,000-\$150,000, the majority of which is the training for local-hire *churrasqueiros*.” CAR at 278, 440. The petitioner has not provided a breakdown of the relative costs of training for this position or information regarding the average number of new locally-hired *churrasqueiro* chefs assigned to a brand new restaurant. However, based on the figures provided, it appears that the cost of training each locally-hired *churrasqueiro* chef may in fact be lower than the cost of training each Brazilian worker.

Overall, the petitioner initially made no claim and provided no explanation or evidence from an economic inconvenience standpoint for maintaining a certain number of native Brazilian *churrasqueiro* chefs other than emphasizing its ability to state in its marketing materials that its *churrasqueiro* chefs are “authentic.”

The petitioner also did not establish in the record the economic inconvenience or disruption to its U.S. or foreign-based operations if it were required to hire someone other than this particular beneficiary. The petitioner noted in its response to the director’s RFE that the existing [REDACTED] restaurant in which the beneficiary would work and which had been open for five years, was understaffed with only 11 current *churrasqueiro* chefs. However, as discussed above, it did not distinguish between the current number of locally-hired and Brazilian chefs currently working in this restaurant and, when asked whether any other employees at the company perform the duties stated in the beneficiary’s proposed position description, the petitioner identified that number as 11. CAR at 345. It did not explain that it would suffer an economic disruption at this restaurant if it were unable to transfer this particular employee. Rather the petitioner stated that the beneficiary expressed an interest in the transfer and was deemed qualified based on his performance with the company’s Brazilian operations. CAR at 339.

The submitted expert testimony from Mr. [REDACTED] and the petitioner’s own statements submitted prior to the initial denial of the petition indicated that all *churrasqueiro* chefs at a given restaurant fully perform the *churrasqueiro* chef duties described in the record, work as a team, and individually interact with, serve, and

rate of the Brazilian *churrasqueiro* chefs is relatively low because their jobs are linked to their immigration status. See 8 C.F.R. § 274a.12(b)(12) (“An intracompany transferee (L-1) . . . may be employed only by the petitioner through whom the status was obtained”); see also *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm’r 1982) (though applying an earlier L-1B standard, noting generally that the L-1 visa classification was not intended to alleviate or remedy a shortage of U.S. workers).

entertain all diners during their shifts.¹⁸ CAR at 275, 277. The petitioner sought to distinguish its chefs from other chefs employed in steakhouses based on their cooking and butchery skills, and sought to distinguish its *churrasqueiro* chefs from those employed in competitors' "Americanized" Brazilian *churrascarias*, but, again, it drew no distinctions between the knowledge, skills, or capabilities of its locally-hired and Brazilian *churrasqueiro* chefs. It simply stated that its *churrasqueiro* chefs in general are critical to the company's success and they are able to convey a uniquely authentic experience as they "were either (i) born in Brazil, and raised in the [redacted] region and culture . . . or (ii) have received extensive, rigorous training by [redacted] Churrasqueiro Chefs at a [redacted] restaurant location in the United States." CAR at 345.

Subsequent to the denial of the petition, the petitioner's claims have shifted considerably regarding the knowledge, skills, and capability of its locally hired staff in comparison to Brazilian staff. These discrepancies are relevant to whether the petitioner has satisfied its burden of proof. The petitioner now claims that approximately 75 percent of the *churrasqueiro* chefs working in its restaurants on a day-to-day basis can barely perform seven out of 18 duties that it previously claimed were performed seamlessly by all 10 to 12 *churrasqueiro* chefs working in each outlet.¹⁹ The petitioner claims that as a result of its inability to adequately train U.S. staff to perform these job duties within a reasonable amount of time, it has established economic inconvenience as contemplated in the Puleo and Ohata memoranda and provided adequate support for its claim that its Brazilian *churrasqueiro* chefs, including the beneficiary, possess specialized knowledge.

The Court emphasized that the "amount of in-house training a company's employees would have to receive to acquire the knowledge in question" is a "natural prox[y]" for economic inconvenience. 769 F.3d at 1142. However, the petitioner has not established that: (1) locally-hired employees take longer to train; or (2) the local hires cannot be trained to effectively or fully perform the duties of a *churrasqueiro* chef within a

¹⁸ The petitioner stated that "each dining customer in each [redacted] restaurant is visited multiple times during each meal by the approximately 10 Churrasqueiro Chefs who work at any one time at a [redacted] restaurant to butcher, roast, and serve 14-15 cuts of meat to restaurant patrons." CAR at 345.

¹⁹ In fact, Mr. [redacted] restates at page 3 of his affidavit that "[e]ach guest is engaged by each of the 10-12 *churrasqueiros* at the restaurant" who "prepare and cook the *churrasco* on an open grill, then leave their positions at the fire to circulate through [redacted] dining room, offering to carve various meats on long skewers for guests . . . , educating guests about the meats and gaucho cooking, traditions, and culture generally-while anticipating their required return to the fire, where they simultaneously are roasting an average of five or six skewers." CAR at 436 (emphasis added). He then goes on to state, in the same affidavit, that locally-hired *churrasqueiro* chefs who constitute the bulk of the petitioner's U.S.-based *churrasqueiro* workforce, cannot actually be trained to perform 10 of the 18 key duties that he previously indicated are performed by all [redacted] *churrasqueiro* chefs, including those duties he specifically mentioned at page 3 of his affidavit.

reasonable period of time. On the contrary, the evidence presented indicates that locally-hired *churrasqueiro* chefs take less time to train than Brazilian *churrasqueiro* chefs (6-18 months versus 18-24 months). In addition, it remains unsubstantiated why or how locally-hired *churrasqueiro* chefs cannot be trained to effectively or fully perform these duties within a reasonable period of time. For these reasons, we conclude that the petitioner has not established by a preponderance of the evidence that, relative to the petitioner's adduced investment to train qualified *Brazilian* hires, it would be an economic inconvenience to train qualified *local* hires to perform the same duties as its *churrasqueiro* chefs of Brazilian origin.

IV. CONCLUSION

The petitioner asserts that its business will suffer if it cannot rely on L-1B visas to transfer *churrasqueiro* chefs from Brazil. Our decision here is case-specific and based upon the evidentiary record before us in the instant petition. Upon careful review of that record, we conclude that the petitioner has not established by a preponderance of the evidence that the proffered position involves specialized knowledge, that the beneficiary possesses that claimed specialized knowledge, or that the beneficiary has at least one continuous year of employment abroad in a position that involved specialized knowledge, as is required under section 101(a)(15)(L) of the Act and implementing regulations.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012). Here, that burden has not been met.

ORDER: We affirm our previous decision. The petition is denied.