

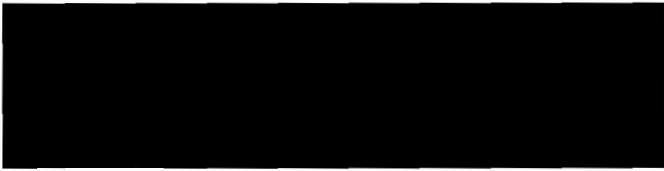
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D7



File: WAC 08 100 51923 Office: CALIFORNIA SERVICE CENTER Date: APR 02 2009

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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner, a Michigan corporation, filed this nonimmigrant visa petition to employ the beneficiary in the position of technical programmer as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims to be an affiliate of the beneficiary's foreign employer in India.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, the petitioner argues that the beneficiary has specialized knowledge of Miracle Software Development Methodology (MSDM) and the Business Value Assessment (BVA) process. In support, the petitioner submits additional evidence pertaining to MSDM.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

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

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

The petitioner describes the beneficiary's duties and claimed specialized knowledge in a letter dated February 12, 2008. The petitioner claims that the beneficiary's knowledge of the MSDM and the BVA process is special or advanced. MSDM is described in the February 12, 2008 as follows:

[The petitioning organization] has developed a unique software development methodology called MSDM and the said methodology is used on certain IT projects. MSDM methodology process has its own architecture. MSDM methodology is a framework for software engineering that promotes development iterations through the life cycle of the project. The methodology has the following core segments:

- Process principles and practices;
- Process Model and associated content library; and
- The underlying process definition language.

Process Principles and Practices: The principles, core practices and essential elements involved in MSDM methodology are the foundation on which the MSDM has been developed. Practice and implementation of these process principles significantly contributes to effective project management and cost effective solutions. As a result of effective project management and cost effective solutions, [the petitioning organization] has tremendous advantage in the IT market and plays a dominant role in competing with international market competition.

Process Model and associated content library: MSDM's process model and associated content library is modified annually to be dynamic to the ever changing technological processes.

The underlying process definition language: Underlying it all is a process meta-model. This model provides a language of process definition elements for describing software engineering process.

MSDM methodology has four phase processes including inception, elaboration, construction and transition.

The petitioner claims that the beneficiary acquired her knowledge of the MSDM and the BVA process through on-the-job training received during her 26 months of employment abroad. The beneficiary allegedly received classroom training and worked on five projects, which required the application of her purported specialized knowledge of the MSDM and the BVA process. The petitioner summarizes the beneficiary's acquisition and application of her knowledge as follows:

As a result of employment with [the foreign employer] and specialized knowledge in [the MSDM] and BVA process by virtue of classroom training and on-the-job training having worked on 5 projects spreading in 2 years and 1½ months utilizing MSDM methodology & BVA process, the beneficiary gained invaluable experience in [the petitioning organization's] MSDM methodology & BVA process and their application to the company's software development projects.

Finally, the petitioner claims that the beneficiary's purported specialized knowledge is necessary to perform the duties of the proffered position in the United States. The petitioner describes the beneficiary's proposed duties as a "technical programmer" working "on several software development projects" as follows:

- Use and implement [MSDM] on several projects;
- Use and implement [the BVA] process;
- Use Electronic data interchange procedures and various standards like ANSI X-12, EDIFACT, and IDOC also with several file formats like positional and delimited;
- Develop specifications for software development using [the MSDM] methodology;
- Develop maps per specifications and work on different kinds of maps like Application to application, Application to standard and standard to standard using [the MSDM] methodology;
- Prepare and implement the code list/synonym list;
- Create Trading partners in the Gentran Server;
- Involve in Testing of Maps by generating different test cases;
- Create several Business Process with GPM in GIS using [the BVA] process;
- Create inbound and outbound envelopes in GIS; and
- Generate Functional Acknowledgements for maps.

On March 5, 2008, the director requested additional evidence. The director requested, *inter alia*, an explanation addressing how the beneficiary's duties, experience, and training differ by some unusual quality from those of other workers employed by the petitioning organization or in the industry at-large and how the knowledge is not generally known by workers in the beneficiary's field of endeavor.

In response, counsel submitted a letter dated May 23, 2008 in which he claims the beneficiary acquired her specialized knowledge through on-the-job experience over a two-year period and by attending six training sessions, lasting a total of 9 weeks, pertaining to MSDM. Counsel also claims that the beneficiary attended three BVA process training sessions, although the length of this training was not established. The substance of any of

this training, or the number of workers who participated in the training, was also not established. Counsel summarizes the petitioner's claim that the beneficiary has acquired specialized knowledge, which differs from similarly employed and educated software professionals, as follows:

The special and/or advanced and/or uncommon knowledge possessed by the beneficiary is different and unique and is not generally found in the IT industry. In that the beneficiary's knowledge in [the MSDM] & BVA process is not available to other software professionals in the IT industry. The other software professionals in the IT industry mostly have general software development skills which are no where [sic] close to the advanced/uncommon specialized knowledge acquired and possessed by this beneficiary. This specialized knowledge professional possess[es] knowledge that is different from what is generally available in the area of her endeavor.

It is clearly evident that combining her 6 class-room trainings on [the MSDM] & BVA process over the last 2 and ½ years and employment experience in handling critical IT projects utilizing [the MSDM] & BVA process, the beneficiary possesses advanced and uncommon specialized knowledge in [the petitioning organization's] technologies and domain expertise.

Please note that in all the [described] 4 IT projects [abroad], the beneficiary extensively utilized [the MSDM] & BVA process. Also note that over 2 and ½ years of employment duration, [the petitioning organization's] higher management and project managers advised, closely interacted with and guided the beneficiary with regard to [the MSDM] and BVA process. These inputs from the higher management are invaluable to the beneficiary as far as the specialized knowledge goes. These inputs and guidance strength[en]s the depths of the specialized knowledge gained through 6 classroom trainings received on [the MSDM] & BVA process.

Whereas general software professionals in the IT market or other software professionals within the petitioner company are no where [sic] close to this beneficiary/specialized knowledge professional as they were not given the above said extensive class-room training and on-the-job training for over 2 years. The general software professionals neither possess petitioner's domain expertise nor in depth knowledge in petitioner's technologies or tools such as [the MSDM] & BVA process.

On June 6, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge.

On appeal, the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, the petitioner argues that the beneficiary has specialized knowledge of the MSDM and the BVA process. In support, the petitioner submits, for the first time, additional technical evidence pertaining to MSDM. The "overview" of MSDM indicates that the foundation of the petitioning organization's "framework for software engineering" is IBM's "Rational Unified Process."

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has specialized knowledge or that she has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The L-1B specialized knowledge classification requires U.S. Citizenship and Immigration Services (USCIS) to distinguish between those employees who possess specialized knowledge from those who do not possess such knowledge. Exactly where USCIS should draw that line is the question before the AAO. On one end of the spectrum, one may find an employee with the minimum one-year of experience but only the basic job-related skill or knowledge that was acquired through that employment. Such a person would not be deemed to possess specialized knowledge under section 101(a)(15)(L) of the Act. On the other end of the spectrum, one may find an employee with ten years of experience and advanced training who developed a product or process that is narrowly understood by a few people within the company. That individual would clearly meet the statutory standard for specialized knowledge. In between these two extremes would fall, however, the whole range of experience and knowledge that may be found within a workplace.

Looking to the language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf. Westen, The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).¹

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

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

¹ Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

(3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

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

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *See* H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

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

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

§ 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

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

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

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

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

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. At a minimum, the petitioner must articulate with specificity the

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

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced technical programmers employed by the petitioning organization or in the industry at-large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary has approximately 26 months of experience abroad where she allegedly acquired "specialized knowledge" of the BVA process and MSDM, "a framework for software engineering that promotes development iterations through the life cycle of the project." The petitioner also asserts that this knowledge was necessary to perform the beneficiary's duties abroad and will be necessary to perform the duties of the proffered position in the United States. The beneficiary is claimed to have acquired this knowledge through nine weeks of classroom training and approximately two years of work experience during which "higher management and project managers advised, closely interacted with and guided the beneficiary." Counsel argues that the beneficiary's knowledge of the MSDM and the BVA process is "different and unique," that such knowledge is unavailable to other software professionals in the IT industry, and that "other software professionals in the IT industry mostly have general software development skills which are no where [sic] close to the advanced/uncommon specialized knowledge acquired and possessed by this beneficiary." As previously indicated, counsel submits on appeal an "overview" of MSDM, which indicates that its foundation is IBM's "Rational Unified Process."

Accordingly, despite the petitioner's claim, the record does not establish how, exactly, this knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or by technical programmers in the industry at-large. The record does not establish what qualities of the MSDM or the BVA process are of such complexity that the impartation of this knowledge amounts to the acquisition of special or advanced knowledge. Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's knowledge cannot be imparted to a similarly experienced and educated technical programmer in a relatively short period of time. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). To the contrary, as the claimed specialized knowledge is based upon IBM's "Rational Unified Process," the record is not persuasive in establishing that knowledge of the MSDM and the BVA process differs materially from knowledge commonly held throughout the computer software development industry. Finally, the record is not persuasive in establishing that the beneficiary's claimed nine weeks of classroom training, combined with her work experience, truly imparted to her knowledge that could reasonably be considered "special" or "advanced."

Not only is the record devoid of evidence establishing the nature or substance of this "training," it does not appear that knowledge of a process or methodology that can be imparted to a worker in nine weeks, absence evidence to contrary, could be considered to be specialized knowledge.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by technical programmers generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's processes or methodologies does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced technical programmer is not "specialized knowledge." Moreover, the proprietary or unique qualities of the MSDM or the BVA process do not establish that any knowledge of this methodology or process is "special" or "advanced" simply by being proprietary or unique. Rather, the petitioner must establish that qualities of the methodology or process require this employee to have knowledge beyond what is common in the industry or within the organization itself. This has not been established in this matter. For example, the fact that other workers outside of the petitioning organization may not have very specific knowledge regarding the petitioner's methodology or process is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced and educated computer worker.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced computer worker. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced technical programmer, or that she has received special training in the company's methodologies or processes which would separate her from other similarly experienced and educated workers employed within the petitioner's organization or in the industry at-large. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. See *Matter of Penner*, 18 I&N Dec. at 52.

Based on the evidence presented, the petitioner has not established that the beneficiary has specialized knowledge or that she was or will be employed in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.²

² It is noted that counsel relies on three USCIS memoranda in arguing that the petitioner has established that the beneficiary will be employed in the United States in a specialized knowledge capacity. Memo. From James A. Puleo, Acting Executive Assoc. Comm., Immigration and Naturalization Service, *Interpretation of Specialized Knowledge* (March 9, 1994); Memo. From Fujie O. Ohata, Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge* (Dec. 20, 2002); and Memo. From Richard E. Norton, Assoc. Comm., Immigration and Naturalization Service, *Interpretation of Specialized Knowledge Under the L Classification* (Oct 27, 1988).

However, it is noted that these memoranda articulate internal guidelines for agency personnel; they do not establish judicially enforceable standards. Agency interpretations that are not arrived at through precedent decision or notice-and-comment rulemaking – such as those in opinion letters, policy statements, agency manuals, and enforcement guidelines – lack the force of law and do not warrant *Chevron*-style deference. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). An agency's internal guidelines "neither confer

