



U.S. Citizenship  
and Immigration  
Services

## MEMO FOR FEEDBACK

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# Policy Memorandum

SUBJECT: L-1B Adjudications Policy

## Purpose

This policy memorandum provides guidance on the adjudication of the L-1B classification, which permits multinational companies to transfer employees who possess “specialized knowledge” from their foreign operations to their operations in the United States. It provides consolidated and authoritative guidance on the L-1B program, superseding and rescinding certain prior L-1B memoranda. USCIS is issuing this memorandum for public review and feedback. Upon final publication, the memorandum will update chapter 32.6(e) of the Adjudicator’s Field Manual (AFM).

## Scope

This memorandum applies to and shall be used to guide determinations by all U.S. Citizenship and Immigration Services (USCIS) employees.

## Authorities

- Immigration and Nationality Act (INA) sections 101(a)(15)(L) and 214(c)(2), 8 U.S.C. 1101(a)(15)(L) and 1184(c)(2).
- 8 CFR 214.2(l).

## Policy

### I. Introduction

The L-1 (“intracompany transferee”) nonimmigrant visa classification permits multinational companies to transfer certain categories of employees from their foreign operations to their operations in the United States. Specifically, the L-1A classification is available for intra-

company transfers of corporate managers and executives, while the L-1B visa classification enables intracompany transfers of employees who possess “specialized knowledge.” This memorandum sets forth USCIS policy regarding the L-1B classification for workers with specialized knowledge.

Congress created the L-1B classification so that multinational companies could more effectively transfer foreign employees with specialized knowledge to their U.S. operations, enhancing such companies’ ability to leverage their workforces. Employees who work in any industry and serve in any type of position may be classified as L-1B nonimmigrants, so long as the position described in the L-1B petition requires specialized knowledge and the beneficiary is found to possess such knowledge. Creation of the program reflected Congress’s concerns with meeting the workforce needs of multinational employers operating in an increasingly global marketplace. USCIS’s mission is to ensure that the objectives of the L-1B program are achieved and that the program’s integrity is maintained.

This memorandum provides guidance to officers in adjudicating petitions filed by employers seeking to transfer “specialized knowledge” personnel to the United States. The guidance provides clarification regarding how L-1B petitioners may demonstrate that an employee possesses specialized knowledge. In the case of off-site employment, it also provides greater clarity regarding compliance with the requirements of the L-1 Visa (Intracompany Transferee) Reform Act of 2004 (“L-1 Visa Reform Act”), Pub. L. No. 108-447, div. J, tit. IV, subtit. A, 118 Stat. 3351. The practical approach outlined in this guidance reflects the L-1B classification’s broad statutory and regulatory definitions, while serving the purpose of the L-1B program and recognizing the fluid dynamics of the business world in which petitioning organizations operate.

This memorandum provides consolidated and authoritative guidance on the L-1B program, superseding and rescinding prior L-1B memoranda as described in Section III. It interprets existing statutory and regulatory authorities to promote consistency and efficiency in L-1B adjudications and the policy objectives described herein. Such adjudications require individualized assessments based on a totality of the circumstances and determinations based upon the law and a preponderance of the evidence presented.

## **II. Background**

In 1970, Congress created the L-1 visa program after concluding that immigration laws at the time unduly restricted the transfer and development of foreign personnel vital to the interests of U.S. businesses.<sup>1</sup> Congress designed the L-1 classification to enable employers to more effectively transfer such personnel within their organizations, including personnel with “specialized knowledge.” The legislative history indicates that Congress intended for the class of eligible persons to be narrowly drawn, but Congress also anticipated that the L-1 petition

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<sup>1</sup> See generally Immigration Act of 1970, Pub. L. No. 91-225; H.R. Rep. 91-851, as reprinted in 1970 U.S.C.C.A.N. 2750, 2753-54 (noting the need to “help eliminate problems faced by American companies having offices abroad transferring key personnel freely within the organization”).

process would be administered in an efficient way to facilitate qualifying personnel transfers for U.S. businesses.

The 1970 Act, however, did not define “specialized knowledge.” Interpretation of the term thus developed over time through a series of agency regulations and precedent decisions, which generally imposed new and increasingly restrictive requirements. Such requirements included, for example, that specialized knowledge must relate to “proprietary” information and that such knowledge cannot otherwise be available in the U.S. labor market.

In 1990, Congress sought, among other things, to provide clarity to the term “specialized knowledge” through the passage of the Immigration Act of 1990, Pub. L. No. 101-649. This Act provides the current statutory definition of “specialized knowledge”:

[A]n 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.

Immigration and Nationality Act (INA) 214(c)(2)(B). In drafting the 1990 Act, Congress intended to broaden the use of the L-1 visa category in specific ways.<sup>2</sup> Notably, the 1990 Act did not include a proprietary knowledge requirement. H.R. Rep. 101-723(I), 1990 U.S.C.C.A.N. at 6749.

Subsequently, the former Immigration and Naturalization Service (INS) revised its L-1 regulations to include a more liberal interpretation of specialized knowledge. 56 Fed. Reg. 31,553, 31,554 (1991). The definition of “specialized knowledge” in those regulations, which continues to govern today, closely tracks the statutory definition:

[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.

Title 8, Code of Federal Regulations (8 CFR) 214.2(1)(i)(ii)(D). The prior regulatory definition had required that the beneficiary possess an advanced level of expertise, as well as proprietary knowledge not available in the U.S. labor market. The new (and current) definition eliminated these requirements, permitting a finding of specialized knowledge in more varied circumstances. This approach is consistent with the intent of Congress to enhance the ability of multinational employers to use the specialized skills of their employees and to promote the United States as a global business destination.

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<sup>2</sup> The 1990 Act expanded eligibility for L-1 classification in four ways: (1) by allowing certain accounting firms access to the L-1 program; (2) by recognizing the L-1 blanket petition process; (3) by expanding the ‘one-year’ foreign employment requirement to include employment within three years prior to admission, and (4) by providing a seven-year maximum period of L-1A admission for managers and executives. See H.R. Rep. 101-723(I)(1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749.

Following promulgation of the above regulation, legacy INS and USCIS issued the following memoranda to clarify the meaning of specialized knowledge:

- Memorandum of James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, INS, “Interpretation of Specialized Knowledge (CO 214L-P)” (Mar. 9, 1994) (“Puleo Memo”);
- Memorandum of Fujie Ohata, Associate Commissioner, Service Center Operations, INS, “Interpretation of Specialized Knowledge (HQSCOPS 70/6.1)” (Dec. 20, 2002) (“2002 Ohata Memo”); and
- Memorandum of Fujie Ohata, Director, Service Center Operations, USCIS, “Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status” (Sept. 9, 2004) (“2004 Ohata Memo”).

The Puleo Memo described “specialized knowledge” as knowledge that is different from that which is generally found in the particular industry, but not necessarily knowledge that is proprietary or unique. It also clarified that specialized knowledge based on knowledge of the company’s processes or procedures must be “advanced, highly developed, or complex,” but need not be proprietary, unique or narrowly held throughout the company. Similarly, the 2002 Ohata Memo stressed that specialized or advanced knowledge “need not be proprietary or unique;” that “specialized knowledge of the company product . . . must be noteworthy or uncommon;” and that “knowledge of company processes or procedures . . . must be advanced” but “need not be narrowly held throughout the company.” Finally, the 2004 Ohata Memo noted 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.” The 2004 Ohata Memo also reiterated that advanced knowledge “need not be narrowly held throughout the company.”

In 2004, Congress enacted the L-1 Visa Reform Act, which established further requirements for the adjudication of L-1B petitions.<sup>3</sup> This legislation did not affect the meaning of “specialized knowledge,” but instead addressed the placing of L-1B beneficiaries at third-party worksites as “labor for hire.” Among other things, the Act requires that any prospective L-1B beneficiary who will be primarily located at the worksite of another employer (referred to as “offsite employment”) must be (1) controlled and supervised by the petitioning organization; and (2) provided in connection with an exchange of products or services between the petitioning organization and the unaffiliated company for which specialized knowledge specific to the petitioning organization is required. *See* INA 214(c)(2)(F). Accordingly, where a prospective L-1B beneficiary will be located primarily at a third-party worksite, USCIS must determine whether that beneficiary is eligible for the classification under the conditions established in the L-1 Visa Reform Act.

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<sup>3</sup> L-1 Visa Reform Act 412-417.

### **III. Scope of this Memorandum and Revision to the Adjudicator’s Field Manual (AFM).**

To date, policy on the L-1B classification has been set forth in a series of policy memoranda dating back to 1994. This memorandum is consistent with those policy memoranda but provides consolidated and authoritative guidance on determining whether specialized knowledge has been established in L-1B petitions and ensuring compliance with the L-1 Visa Reform Act. As such, USCIS supersedes and rescinds the following memoranda:

- Memorandum of James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, INS, “Interpretation of Specialized Knowledge (CO 214L-P)” (Mar. 9, 1994);
- Memorandum of Fujie Ohata, Associate Commissioner, Service Center Operations, INS, “Interpretation of Specialized Knowledge (HQSCOPS 70/6.1)” (Dec. 20, 2002);
- Memorandum of Fujie Ohata, Director, Service Center Operations, “Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status” (Sept. 9, 2004); and
- Memorandum of William R. Yates, Associate Director for Operations, “Changes to the L Nonimmigrant Classification Made by the L-1 Reform Act of 2004 (HQ 70/8)” (July 28, 2005).

In addition, USCIS will update chapter 32.6(e) of the AFM when it issues the final version of this memorandum. At that time, the previous version of *AFM* chapter 32.6(e) will no longer be applicable to the L-1B adjudicative process.

The guidance in this memorandum regarding the L-1 Visa Reform Act is consistent with that set forth in *AFM* chapters 32.3(c) and 32.5(b) and should be read in conjunction with those *AFM* chapters.

This guidance applies to all USCIS employees. When adjudicating L-1B petitions, USCIS officers should apply the statutory and regulatory criteria for L-1B classification in a manner consistent with this guidance.

### **IV. “Preponderance of the Evidence” Standard**

A petitioner seeking L-1B classification for an employee must establish that it meets each eligibility requirement of the classification by a preponderance of the evidence.<sup>4</sup> In other words, the petitioner must show that what it claims is more likely the case than not. This is a lower standard of proof than that of “clear and convincing evidence” or the “beyond a reasonable doubt” standard. The petitioner does not need to remove all doubt from the adjudication. Even if an officer has some doubt about a claim, the petitioner will have satisfied the standard of proof

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<sup>4</sup> See *Matter of Chawathe*, 25 I. & N. Dec. 369, 375-376 (AAO 2010).

if it submits relevant, probative, and credible evidence, considered “individually and within the context of the totality of the evidence,” that leads to the conclusion that the claim is “more likely than not” or “probably” true.<sup>5</sup>

## V. Elements of the L-1B Classification

In order to establish eligibility for approval, the L-1B petitioner must show: (1) that the beneficiary possesses “specialized knowledge”; (2) that the position offered involves the “specialized knowledge” held by the beneficiary; and (3) that the beneficiary has at least one continuous year of employment abroad in a managerial, executive, or specialized knowledge capacity with the petitioning organization or a qualifying foreign organization within the preceding three years. If the beneficiary will be located primarily at the workplace of an unaffiliated company, the petitioning organization also must establish that the beneficiary is eligible for L-1B classification under the requirements of the L-1 Visa Reform Act, discussed below in section VI.

### A. Definition of “specialized knowledge”

A petitioning organization can demonstrate “specialized knowledge” by establishing either one of two statutory criteria. Under the statute, a beneficiary is deemed to have specialized knowledge if he or she has: (1) “special” knowledge of the company product and its application in international markets; or (2) an “advanced” level of knowledge or expertise of the processes and procedures of the company. INA 214(c)(2)(B). The corresponding regulation similarly defines specialized knowledge in terms of “special” or “advanced” knowledge:

**[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.

8 CFR 214.2(l)(1)(ii)(D) (emphasis added).

Because the statute and regulations do not define the terms “special” or “advanced,” we look to their common dictionary definitions, as well as the agency’s practice and experience in this context. The term “special” is defined in leading dictionaries as “surpassing the usual,” “distinct among others of a kind,” “distinguished by some unusual quality,” “uncommon,” or “noteworthy.”<sup>6</sup> The term “advanced” is defined in various dictionaries as “greatly developed beyond an initial stage,” or “ahead or far or further along in progress, complexity, knowledge,

<sup>5</sup> *Id.* at 376.

<sup>6</sup> See Merriam-Webster Dictionary (“special”), available at <http://www.merriam-webster.com/dictionary/special?show=0&t=1418153019> (last visited Mar. 13, 2015); Dictionary.com (“special”), available at <http://dictionary.reference.com/browse/special?s=t> (last visited Mar. 13, 2015); Oxford English Dictionary (“special”), available at <http://www.oed.com/search?searchType=dictionary&q=special&searchBtn=Search> (last visited Mar. 13, 2015).

skill, etc.”<sup>7</sup> Applying these definitions to the statutory and regulatory text, a beneficiary seeking L-1B classification should possess:

- **special knowledge**, which is knowledge of the petitioning employer’s product, service, research, equipment, techniques, management, or other interests and its applications in international markets that is demonstrably *distinct or uncommon in comparison to* that generally found in the particular industry or within the petitioning employer; or
- **advanced knowledge**, which is knowledge or expertise in the organization’s specific processes and procedures that is not commonly found in the relevant industry and is *greatly developed or further along in progress, complexity and understanding* than that generally found within the petitioning employer.

The following section explains how to determine whether a beneficiary possesses special or advanced knowledge.

### **B. Application of the “specialized knowledge” definition**

A beneficiary may possess either special or advanced knowledge, or both. Determining whether a beneficiary has “special knowledge” requires review of the beneficiary’s knowledge of how the company manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests (hereinafter “products or services”). Determinations concerning “advanced knowledge,” on the other hand, require review of the beneficiary’s knowledge of the specific employing company’s processes and procedures. While the beneficiary may have general knowledge of processes and procedures common to the industry, the focus here is primarily on the processes and procedures utilized specifically by the beneficiary’s employer. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary’s knowledge is not commonly held throughout the particular industry or within the petitioning employer. As discussed in detail below, however, such knowledge need not be proprietary in nature or narrowly held within the employer’s organization.

Determining whether knowledge is “special” or “advanced” inherently requires a comparison of the beneficiary’s knowledge against that of others. The petitioner bears the burden of establishing such a favorable comparison. Because “special knowledge” concerns knowledge of the petitioning organization’s products or services and its application in international markets, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is demonstrably distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry or within the petitioning organization. Alternatively, because “advanced knowledge” concerns knowledge of a company’s processes and procedures, the petitioner may meet its burden through evidence that the beneficiary has knowledge or expertise

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<sup>7</sup> See Merriam-Webster Dictionary (“advanced”), available at <http://www.merriam-webster.com/dictionary/advanced> (last visited Mar. 13, 2015); Dictionary.com (“advanced”), available at <http://dictionary.reference.com/browse/advanced?s=t> (last visited Mar. 13, 2015).

that is greatly developed or more complex in comparison to other workers in the petitioning employer's operations.

The following is a *non-exhaustive* list of factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized:

- The beneficiary is qualified to contribute to the U.S. operation's knowledge of foreign operating conditions as a result of knowledge not generally found in the industry or the petitioning organization's U.S. operations.
- The beneficiary possesses knowledge that is particularly beneficial to the employer's competitiveness in the marketplace.
- The beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the employer's productivity, competitiveness, image, or financial position.
- The beneficiary's claimed specialized knowledge normally can be gained only through prior experience with that employer.
- The beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual without significant economic cost or inconvenience (because, for example, such knowledge may require substantial training, work experience, or education).<sup>8</sup>
- The beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily unique to the firm.

The presence of one or more of these (or similar) factors, when assessed in the totality of the circumstances, may be sufficient to establish by a preponderance of the evidence that a beneficiary has specialized knowledge. As noted above, this list of factors is meant to be illustrative, not exhaustive, and it does not impose particular requirements that a petitioner must demonstrate. Suggested evidence that petitioners may provide consistent with these factors are provided in Section V.C.

1. Specialized knowledge cannot be easily imparted to other individuals.

One of the several factors that may be considered in determining whether knowledge is specialized is the amount and type of training, work experience, or education required to develop that knowledge. *See* 8 CFR 214.2(l)(3)(iv) (requiring petitioner to submit evidence of the

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<sup>8</sup> One factor that may be relevant in weighing economic inconvenience is the time-sensitivity of the organization's need in its U.S. operations for an employee with the particular type of specialized knowledge, and the harm the organization would suffer if it cannot fulfill its time-sensitive personnel need through transfer of the beneficiary. *Cf. Fogo De Chao (Holdings) Inc. v. DHS*, 769 F.3d 1127, 1142 (D.C. Cir. 2014) (observing that 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").



beneficiary's "prior education, training, and employment"). Knowledge therefore will not generally be considered specialized if it can be easily imparted from one person to another. On the other hand, knowledge generally may be considered specialized if a petitioner can demonstrate through credible and relevant evidence that the knowledge possessed by the beneficiary would be difficult to impart to another individual without significant economic cost or inconvenience to the petitioning organization.<sup>9</sup> Although significant economic cost or inconvenience may be a relevant factor, a petitioner is not required to establish significant economic cost or inconvenience in order to establish that the beneficiary's knowledge is specialized.

2. Specialized knowledge need not be proprietary or unique to the petitioning organization.

Although specialized knowledge cannot be knowledge that is generally possessed or easily transferrable, it need not be proprietary or unique to the petitioning organization. A petitioner is not required to demonstrate that it is the only company where the beneficiary could have acquired the knowledge, or that it is the only company that trades in the technologies, techniques, products, services, or processes that are the subject of the beneficiary's knowledge. Although a petitioner may provide evidence that knowledge is proprietary or unique in support of its claim that the knowledge is also special or advanced, and thus specialized, the L-1B classification does not *require* such a finding.

3. L-1B classification does not require test of the U.S. labor market.

As noted above, the petitioning organization must ordinarily demonstrate that the beneficiary's knowledge is not generally or commonly held in the relevant industry. Such a determination, however, does *not* involve a test of the U.S. labor market. A petitioner is not required to demonstrate the lack of readily available workers to perform the relevant duties in the United States.<sup>10</sup> The relevant inquiry is not whether workers with the beneficiary's knowledge are available to the employer; rather, it is whether there are so many such workers that the knowledge is generally or commonly held in the relevant industry, and thus not specialized. If there are numerous workers in the United States who possess knowledge that is generally similar to the beneficiary's, it is the petitioner's burden to establish that the beneficiary's knowledge nevertheless is truly specialized.<sup>11</sup>

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<sup>9</sup> See *Fogo De Chao*, 769 F.3d at 1142.

<sup>10</sup> In *Fogo De Chao*, the D.C. Circuit noted that the Immigration Act of 1990 precludes USCIS from requiring evidence establishing that the specialized knowledge in question is not readily available in the United States labor market. 769 F.3d at 1145. An inquiry into whether knowledge is generally or commonly held in a given industry—and thus not "special," as that term is naturally understood—is separate from an inquiry into whether there are U.S. workers available to perform a given job.

<sup>11</sup> Comparisons that account for similarly employed workers within the petitioning organization's U.S. operations are discussed in section V.B.4.

4. Specialized knowledge need not be narrowly held within the petitioning organization.

Although comparisons with other employees of the petitioning organization may be useful in determining whether the beneficiary's knowledge is "special" or "advanced," such knowledge need not be narrowly held within the petitioning organization. Multiple employees within a company may have obtained the experience, training, or education necessary to possess the same type of specialized knowledge. Some companies may use technologies or techniques that are so advanced or complex that nearly all employees working on the relevant products or services possess specialized knowledge. The mere existence of other employees with similar knowledge should not, in and of itself, be a ground for denial.

However, in cases where there are already many employees in the U.S. organization with the same specialized knowledge as that of the beneficiary, officers generally should carefully consider the organization's need to transfer the beneficiary to the United States. The officer may consider, for example, the need for another individual with similar specialized knowledge in the organization's U.S. operations and the difficulty in transferring or teaching the relevant knowledge to an individual other than the beneficiary. The officer should also consider how the duties to be performed by the beneficiary that require his or her specialized knowledge may or may not differ from those already employed in the organization's U.S. operations; the extent to which the petitioning organization would suffer economic inconvenience or disruption to its U.S. or foreign-based operations if it were unable to transfer the beneficiary; and whether the salary to be paid to the beneficiary is comparable to similarly situated peers in such U.S. operations. Where many employees within the organization's U.S. operations share the beneficiary's knowledge, yet the beneficiary will be paid substantially less than those similarly situated employees, this may indicate that the beneficiary lacks the requisite specialized knowledge. As described *infra*, however, there may be valid business reasons for the wage discrepancy, but justification for the variance generally should be evaluated in light of the skills, experience, and other factors pertinent to the entire spectrum of employees in the U.S. operations who possess the requisite specialized knowledge.

5. Specialized knowledge workers need not occupy managerial or similar positions or command high salaries compared to their peers.

Unlike the L-1A nonimmigrant classification, the L-1B classification does not require that the beneficiary be a manager or executive. Nor does the classification require that the beneficiary be an officer or supervisor, or hold any other similar position within the petitioning organization. Although rank and salary are factors that may be considered when analyzing whether a beneficiary possesses specialized knowledge, there is no requirement that the beneficiary be of a certain rank within the organization or that the beneficiary's salary be "elevated" compared to his or her peers within the organization or the particular industry. There may be valid business reasons that one employee may be earning more or less than his or her peers. A company in its early development, for example, may not yet have generated sufficient income to pay the beneficiary a greater salary. In creating the L-1B classification, Congress focused on the beneficiary's "knowledge," not his or her position on a company's organizational chart or pay scale.

6. Eligibility for another nonimmigrant classification is not a bar to eligibility for L-1B classification.

The requirements for L-1B classification are distinct from other visa classifications. Eligibility for one classification does not preclude eligibility for another. A beneficiary may possess characteristics that make him or her potentially qualified for two or more distinct nonimmigrant classifications. For example, the beneficiary may have characteristics that make him or her eligible as an L-1B specialized knowledge worker and an H-1B “specialty occupation” worker. Similarly, a beneficiary may qualify for L-1B nonimmigrant status while at the same time possessing the extraordinary ability or achievement necessary for O-1 status. Possession of such dual qualifications does not render the beneficiary ineligible for either classification. Officers should only consider the requirements for the classification sought in the petition, without considering eligibility requirements for other classifications.

### **C. Evaluating Claims of Specialized Knowledge**

USCIS will be able to perform its adjudicatory function most effectively when the petitioner explains with clarity the specific nature of the industry or field involved, the nature of the petitioning organization’s products or services, the specialized knowledge required to perform the beneficiary’s duties, and the need for the beneficiary’s specialized knowledge. To show that the offered position in the United States involves specialized knowledge, the petitioner must submit “a detailed description of the services to be performed.” 8 CFR 214.2(l)(3)(ii). The petitioner must also submit evidence that the beneficiary’s “prior education, training, and employment qualifies him/her to perform the intended services in the United States.” 8 CFR 214.2(l)(3)(iv). While the petitioner is required in all cases to compare the beneficiary’s knowledge to that of others, the petitioner may also be able to demonstrate the nature of the claimed specialized knowledge by, among other things, indicating how and when the beneficiary gained such knowledge or explaining the difficulty of imparting such knowledge to others without significant cost or disruption to its business.

Other evidence that a petitioner may submit to demonstrate that an individual’s knowledge is special or advanced, includes, but is not limited to:

- Documentation of training, work experience, or education establishing the number of years the individual has been utilizing or developing the claimed specialized knowledge as an employee of the organization or in the industry;
- Evidence of the impact, if any, the transfer of the individual would have on the organization’s U.S. operations;
- Evidence that the alien is qualified to contribute to the U.S. operation’s knowledge of foreign operating conditions as a result of knowledge not generally found in the industry or the petitioning organization’s U.S. operations;
- Contracts, statements of work, or other documentation that shows that the beneficiary possesses knowledge that is particularly beneficial to the organization’s competitiveness in the marketplace;

- Evidence, such as correspondence or reports, establishing that the beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the organization's productivity, competitiveness, image, or financial position;
- Personnel or in-house training records that establish that the beneficiary's claimed specialized knowledge normally can be gained only through prior experience or training with that employer;
- Curricula and training manuals for internal training courses, financial documents, or other evidence that may demonstrate that the beneficiary possesses knowledge of a product or process that cannot be transferred or taught to another individual without significant economic cost or inconvenience;
- Evidence of patents, trademarks, licenses, or contracts awarded to the organization based on the beneficiary's work, or similar evidence that the beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily proprietary or unique to the petitioning organization; and
- Payroll documents, federal or state wage statements, resumes, organizational charts, or similar evidence documenting the positions held and the wages paid to the beneficiary and parallel employees in the organization.

A petitioner may submit any other evidence it chooses. In all cases, USCIS will review the entire record to determine whether the petitioner has established by a preponderance of the evidence that the beneficiary has specialized knowledge under the totality of the circumstances, in accordance with the standards set forth in the relevant statutes and regulations, as reflected in this memorandum. Merely stating that a beneficiary's knowledge is somehow different from others or greatly developed does not, in and of itself, establish that he or she possesses specialized knowledge. Ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge.

#### **D. Demonstrating Qualifying Employment**

To be eligible for L-1B classification, the beneficiary must have been employed abroad by the petitioning organization (or an affiliate, subsidiary, parent, or branch of the petitioning organization) on a full-time basis for one continuous year within the three years preceding the filing of the petition. 8 CFR 214.2(1)(3)(iii). The required employment abroad must have been in a managerial or executive capacity, or a capacity involving specialized knowledge. *Id.* 214.2(1)(3)(iv). However, the work to be performed in the United States need not be the same type of work that the beneficiary performed abroad. *Id.* For instance, a person who was employed abroad for one continuous year as a manager by a qualifying organization may,

depending on the circumstances, meet the qualifying employment requirement for L-1B classification.<sup>12</sup>

## **VI. Offsite L-1B Employment (L-1 Visa Reform Act)**

When an L-1B beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the L-1 Visa Reform Act requires the petitioning organization to show that the beneficiary: (1) will not be “controlled and supervised principally” by the unaffiliated employer; and (2) will be placed “in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.” INA 214(c)(2)(F). Absent this showing, the worker is not eligible for L-1B classification. *Id.* The L-1 Visa Reform Act is designed to prevent, among other things, the outsourcing of L-1B beneficiaries to third-party entities as “labor for hire.”<sup>13</sup> Accordingly, if a determination has been made that a beneficiary has specialized knowledge and that he or she will be stationed primarily at the worksite of an unaffiliated employer, USCIS must also determine whether the position involves “labor for hire.”

USCIS has interpreted the “control and supervision” prong of the L-1 Visa Reform Act to require that, despite placement with another employer, the beneficiary will continue to be controlled and supervised principally by the petitioning organization (or its affiliate, subsidiary, parent, or branch).<sup>14</sup> The petitioning organization therefore may not merely supply workers and issue their paychecks in a “labor for hire” arrangement. Instead, the unaffiliated company must have a business relationship with the petitioning organization that involves the provision of products or services by the petitioning organization and not simply the supply of workers alone. This ground of ineligibility applies to all petitions filed on or after June 6, 2005, including petitions for initial, amended, or extended L-1B classification.

With respect to section 214(c)(2)(F)(i) (which requires that the worker not be “controlled and supervised principally” by an unaffiliated employer), it is important to note that the L-1 Visa Reform Act did not prohibit all offsite employment. An L-1B beneficiary may be legitimately stationed at a third-party worksite, even if it is located far from the petitioning employer’s office(s). Further, an unaffiliated employer is not necessarily prohibited from giving day-to-day assignments to the beneficiary, provided that, in the totality of the circumstances, the unaffiliated employer does not principally control and supervise the beneficiary’s activities. The petitioner may establish that the unaffiliated entity lacks principal control and supervision by showing, among other things, that the petitioner at all times retains the principal authority to: dictate the manner in which the work is to be performed, reward or discipline the worker for his or her work performance, and provide the worker’s salary and any normal employer-provided benefits, such

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<sup>12</sup> Further, an L-1B petitioner seeking to use the “blanket petition” process must show that the beneficiary is a “specialized knowledge *professional*,” which is defined as an individual with specialized knowledge who is a member of the professions as defined in INA 101(a)(32). 8 CFR 214.2(l)(1)(ii)(E) (emphasis added).

<sup>13</sup> INA 214(c)(2)(F)(ii); *see also* 149 CONG. REC. 11,649, 11,686, 2003 WL 22143105 (2003) (statement of Sen. Saxby Chambliss).

<sup>14</sup> *See* 149 CONG. REC. at 11,686 (discussing supervision and control by petitioning organization).

as health insurance. In all cases, however, determinations with respect to control and supervision will be based on all of the facts presented.

To satisfy section 214(c)(2)(F)(ii) (which requires that the placement not “essentially be an arrangement to provide labor for hire,” but instead be “in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary”), the petitioner must show that the purpose of the offsite placement is for the beneficiary to use specialized knowledge that is specific to *the petitioning organization*. To be eligible for L-1B status, a beneficiary stationed primarily offsite must be applying specialized knowledge of the petitioning organization’s own services or products. Where a petitioning organization provides a customized product or service to a third party, the beneficiary’s knowledge of the third party’s systems may be considered in addition to, but not as a substitute for, the beneficiary’s knowledge of the petitioning organization’s product or service to determine whether the beneficiary’s knowledge is “special” or “advanced,” based on the totality of the circumstances. USCIS will determine, based on the evidence presented, whether the petitioner has demonstrated that the placement is truly in connection with the provision of the petitioning organization’s product or service, or whether it is essentially an impermissible arrangement of labor for hire.

## **VII. Readjudication of L-1B Status**

In matters relating to an extension of L-1B status involving the same parties (i.e., the same petitioning organization and beneficiary employee) and the same underlying facts, USCIS officers should give deference to the prior determination by USCIS approving L-1B classification.<sup>15</sup> In such cases, USCIS officers should reexamine a finding of L-1B eligibility only where it is determined that: (1) there was a material error with regard to the previous approval for L-1B classification; (2) there has been a substantial change in circumstances since that approval; or (3) there is new material information that adversely impacts the petitioner’s or beneficiary’s eligibility.<sup>16</sup>

## **VIII. Conclusion**

Congress has determined that the ability to transfer company personnel with specialized knowledge is important in fostering the growth and competitiveness of U.S. businesses. Companies should be able to transfer their specialized knowledge employees to do business in an increasingly global marketplace. The L-1B classification provides petitioning organizations

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<sup>15</sup> This policy of deference does not apply to a request for extension where the prior petition indicated that the beneficiary would be coming to the United States to open or be employed in a “new office.” See 8 CFR 214.2(l)(3)(vi).

<sup>16</sup> See Memorandum of William R. Yates, Associate Director for Operations, USCIS, “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity (HQOPRD 72/11.3),” 1-2, (Apr. 23, 2004) (a change in offsite employment, for example, may constitute a substantial change in circumstances or new material information requiring re-adjudication by USCIS to ensure compliance with the L-1 Visa Reform Act).

flexibility, consistent with this memorandum, as to how they may demonstrate that an employee possesses specialized knowledge and, in the case of off-site employment, compliance with the requirements of the L-1 Visa Reform Act. This practical approach is reflected in the L-1B classification's broad statutory and regulatory definitions, maintains the integrity of the L-1B program, and recognizes the fluid dynamics of the business world in which petitioning organizations operate.

### **Implementation**

*Revisions to AFM Chapter 32.6(e) will be included upon issuance of the final memorandum.*

To provide sufficient time for training of USCIS employees, USCIS intends to make this memorandum effective on August 31, 2015.

### **Use**

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications and petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### **Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy.