Angelo: I have an example of an RFE and, subsequent denial, in which the Service's analysis and RFE text demonstrate, in my opinion, a preconceived intent to simply deny the L-1B.

The RFE, which was made up entirely of boilerplate language, included the following text: " The duties outlined appear to be of a general nature for an [Name of Position] ... ." and later in the RFE we were asked to "... provide additional persuasive evidence relating to [Name of Position] ... ."

Our 10 page response to the RFE detailed the company's business domain, the proprietary technology infrastructure the company uses to trade securities globally, a complete breakdown of the employee's role -- with percentages of time devoted to each task and a discussion of why each task required a specialized knowledge -- and the beneficiary's 5 years of experience the as a Senior Developer of one of the company's trading platforms. We described the uniqueness of the trading platform, the specific end-user requirements, the company's proprietary development methodologies and, as we do in all cases, we included a complete list of the more than 20 internal technology and investment domain specific courses completed by the employee.

In its denial (see below), the Service only focused on the training courses and, in particular, zeroed in on two courses -- out of 20+ -- that appeared to include a commercially available product.

"It was noted that at least one of the proprietary tools to be used by the beneficiary, Quality Center Methodology, appeared to be a petitioner-adapted product of Hewlett Packard; a second, Rational Team Concert, appeared to belong to IBM. Additionally, the response to the RFE states, "[company's] unit (to which the beneficiary is to be assigned) is responsible for implementing, integrating, deploying, and supporting strategic third party software and related applications into [company's] global investments management and advisory IT infrastructure." There is therefore reason to believe that an unknown amount of the petitioner's so-called "proprietary" items may actually be hybrids of OEM software adapted and employed under license. The definition of "specialized knowledge," above, requires that the knowledge be special or advanced, and that it involves the petitioner's product, processes, etc. Processes, tools or procedures originally developed by someone else, that are only adapted for the petitioner's use, are fundamentally the work and property of the developing party; adaptation and/or licensing does not necessarily transfer ownership to the petitioner. Therefore, the beneficiary's familiarity and expertise with such tools cannot be considered."

This analysis reflects a complete lack of understanding of technology development -- (1) the need to often use use a commercially available product to develop a company-specific, proprietary application and (2) the customization of a commercially available product that adapts to and aligns with a company's

internal infrastructure and unique business needs and standards. To follow the Service's logic, Bill Gates would not be considered to have a specialized knowledge as he used C/C++ and assembly languages to develop Windows.