**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 1 2013 Office: VERMONT SERVICE CENTER FILE:

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 please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee 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, a Delaware corporation, is an information technology consulting firm. It claims to be a wholly owned subsidiary of located in India. The petitioner seeks to extend the beneficiary's L-1B status so that he may continue to serve in a specialized knowledge capacity as a Systems Analyst, for a period of approximately nine months. The petitioner indicates that the beneficiary will be stationed primarily offsite at the Connecticut worksite of its client, (hereinafter "the unaffiliated employer.")

The director denied the petition, concluding that the petitioner failed to establish the beneficiary has specialized knowledge or that he had been or would be employed in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the evidence of record is sufficient to establish that the beneficiary possesses specialized knowledge and that he has been and will be employed in a specialized knowledge capacity.

## I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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.

Section 412 of the L-1 Visa Reform Act of 2004 states the following:

> (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge to the petitioning employer is necessary.

Finally, the regulation at 8 C.F.R. § 214.2(l)(3) 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.
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> (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.
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> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

## II. The Issue on Appeal

The sole issue addressed by the director is whether the beneficiary has specialized knowledge and whether he has been, and will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner is an IT consulting firm, with 370 employees in the United States, over 4000 employees worldwide, and a gross income of approximately $120 million. The petitioner stated the beneficiary will be working as a Systems Analyst. The petitioner did not provide a description of the beneficiary's duties with the foreign employer prior to his transfer to the United States in an L-1B capacity. The Form I-129 states that the beneficiary was first admitted to the United States in L-1B status on April 27, 2007 after working for the petitioner's foreign subsidiary from August 2006 through April 2007. According to the petitioner's letter submitted in support of the petition, the foreign entity previously employed the beneficiary as a software engineer from October 2004 through May 2006.

The petitioner described the training the beneficiary received to acquire the specialized knowledge. The petitioner stated that the beneficiary is a "subject matter expert" in its in-house methodology known as The petitioner stated that this methodology requires "extensive" hands on training. The beneficiary, as described by the petitioner, has undergone "class room training for the duration of 12 months from October 2006 to September 2007" as well as "extensive on-the-job training" for the duration of 12 months from October 2007 to September 2008.

As evidence of the proprietary nature of this methodology, the petitioner submitted a statement from the foreign entity's Vice President (Delivery), who stated that is a [petitioner] proprietary [*sic*] because it was developed by us in the year 2006 and has been used in various projects." The petitioner provided a copy of a presentation which further describes its methodologies and features. The petitioner described as a tool used "to do financial calculations for the monthly settlement and generate the cash flows and reports for the investor" for clients in the Banking and Financial Services and Insurance domain.

The beneficiary's resume show that he is currently assigned to work with USA on the The resume does not include dates, but shows his last project ended in May of 2006. The beneficiary indicates that he "has extensive experience in designing and implementing N-tier solutions using Microsoft Technologies using .NET, web services, VB, ASP, Oracle, PL/SQL, COM+, IBM MQ Series and Crystal Reports." The petitioner provided evidence of the beneficiary's educational credentials which include a Master of Computer Application degree and a Bachelor of Commerce degree from Indian institutions.

The director issued a Request for Evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence that the beneficiary has one year of continuous employment in a specialized knowledge capacity. Specifically, the director requested a record from the human resources department "detailing how the beneficiary has gained his or her specialized knowledge." The director noted that the documentation should indicate: (1) the pertinent training courses the beneficiary took while working for the company; (2) the duration of the courses; (3) the number of hours spent taking the courses each day; (4) the completion dates; and (5) certificates of completion for these courses.

In response to the RFE, the petitioner submitted the requested documentation regarding the beneficiary's training record. The petitioner stated that the beneficiary was "introduced" to the petitioner's "as early as January 2006" though on-the-job training. Also in response to the RFE, the petitioner stated that the beneficiary acquired in a training program "imparted by [the foreign entity] spanning a 14-month period from February 2006 to April 2007."[1] In the same letter, the petitioner stated that the beneficiary underwent extensive training in the tool from August 2006 to February 2007 and that he "was part of the core development team," thus providing him with "more in depth knowledge than any other resources."

The petitioner submitted a copy of the beneficiary's appointment letter, showing that he was hired as of October 12, 2004. The petitioner also included a chart detailing the beneficiary's training beginning on August 16, 2006. The chart shows 600 hours of training during the period of August 16, 2006 to February 15, 2007. The training courses mostly covered materials related to

A letter from the petitioner's Business Relationship Manager described the beneficiary as an "expert of The letter described the beneficiary's roles and responsibilities without clarifying what dates or for what entity the beneficiary performed the described duties. Notably, according to the Business Relationship Manager, the petitioner's was developed in 2002.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, that he had been employed abroad in a position requiring specialized knowledge, or that he would be employed in a specialized knowledge capacity in the United States. In denying the petition, the director noted that the beneficiary's training does not count for the purposes of meeting the requisite one-year period of employment abroad in a position involving specialized knowledge. Furthermore, the director noted that the beneficiary's knowledge is not special in relation to the organization as a whole.

On appeal, asserts that the beneficiary has been, and will be, employed in a specialized knowledge position. The petitioner contends that the beneficiary's training should count for the purposes of meeting the requisite one year in a specialized knowledge capacity with the foreign employer. Specifically, the petitioner claims that the beneficiary was involved in the development of the tool since its inception in 2005 and during the one year development period was working fulltime with the development team. The petitioner does not clarify when this one year development period took place. The petitioner further claims that the beneficiary was part of the system design team for the tool. Finally, the petitioner states that the beneficiary is part of the "competency development team as one of the trainer[s] for the [petitioner's] providing training to new employees who will be assigned to client projects requiring them to provide implementation or support services.

With respect to the beneficiary's attendance of the six month training program, the petitioner claims that the beneficiary attended this training once assigned to the project as part of the petitioner's

[1] The AAO notes that, according to a chart outlining the beneficiary's employment history which was incorporated into the petitioner's initial supporting letter, the beneficiary was employed by an apparently unaffiliated Indian company, from June 2006 to August 2006.

"commitment to its customers that all employees working or supporting [redacted] will undergo 6 months of extensive training program." The petitioner again described the beneficiary's involvement in the development of [redacted] modules and states that the beneficiary "apart from working on his modules; he was leading other developers and helping their modules." The petitioner asserts the following with respect to the beneficiary's knowledge of [redacted] "Such knowledge of [redacted] can only be gained through previous experience with [the petitioner] which [the Beneficiary] was given specialized on the job training on August 16, 2006 to February 15, 2007."

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary was employed with the foreign entity in a specialized knowledge position or that he will be employed in the United States in a specialized knowledge position as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual has been, and will be, employed in a specialized knowledge capacity. 8 C.F.R. §§ 214.2(l)(3)(ii),(iv). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. 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.

First, the petitioner fails to provide a detailed description of the beneficiary's duties with the foreign employer. The beneficiary's resume does not distinguish between his work for the foreign employer and work performed with the United States entity, but simply identifies his current assignment for the unaffiliated employer. Without a description of the beneficiary's actual duties, the record cannot support a conclusion that the beneficiary was working in a position requiring specialized knowledge. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). As such, it remains unclear when the beneficiary was first assigned to apply his claimed specialized knowledge of the [redacted] tool.

For the first time on appeal, the petitioner states that the beneficiary spent one full year as the lead developer responsible for developing many modules of the [redacted] tool since its inception in 2005. This claim is unsupported by any evidence and is contradicted by other evidence and claims in the record. For example, the petitioner stated at the time of filing that the [redacted] tool was developed in the year 2006 and that the beneficiary commenced 12 months of class room training on the tool beginning in October 2006. According to the beneficiary's resume, he was working on three different client projects throughout

2005 and was not, in fact, the lead developer for the petitioner's tool. In fact, his resume contains no reference to this tool. In the letter submitted in response to the RFE, the petitioner stated that the beneficiary was introduced to the proprietary tool as early as January 2006 through on-the-job training. Finally, the foreign entity's Business Relationship Manager, stated that the tool was developed in 2002. For these reasons, the petitioner's claim that the beneficiary was a lead developer of the tool beginning in 2005 is not supported by the record.

Also, the petitioner failed to provide a consistent and credible description of the training received by the beneficiary to acquire specialized knowledge in the petitioner's tool. In the petitioner's letter submitted in conjunction with the initial filing, the petitioner claimed that the beneficiary gained his specialized knowledge in the through on the job training from October 2007 to September of 2008 and classroom training from October 2006 to September 2007. According to the petitioner, the beneficiary finished the training process in September 2008. The beneficiary, however, was admitted to the United States for the first time in L-1B status on April 27, 2007. Based on the petitioner's claims, the beneficiary did not possess the required specialized knowledge until almost one year after his entry into the United States in L-1B status.

The petitioner stated in the letter submitted with the initial petition that the beneficiary has been working on the same client project since his admission into the United States in April 2007. The petitioner's assertions regarding the completion date of the beneficiary's training therefore cast doubt on whether the position abroad, as well as the position in the United States, requires the claimed specialized knowledge of the tool. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Furthermore, the petitioner's claims regarding the timeframe during which the beneficiary received the required training are inconsistent. The petitioner claims with the initial submission that the beneficiary began classroom training on the in-house methodology in October of 2006. In the petitioner's letter in response to the RFE, the petitioner claims that the beneficiary had on-the-job training from February 2006 through April 2007 and classroom training from mid-August 2006 to February 2007. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Assuming *arguendo* that the beneficiary received the required training by April of 2007, the beneficiary would have completed the required training prior to his entry into the United States in L-1B status. According to the beneficiary's resume, he began working on the client project with the foreign employer sometime after May of 2006. This leaves the beneficiary without the required full year of specialized knowledge for the position with the foreign employer. While the petitioner indicates that the beneficiary commenced employment with the foreign employer in October 2004, it has not suggested that he acquired any specialized knowledge apart from his experience with the tool, and his first documented exposure to this tool occurred in August 2006, less than one year prior to his transfer to the United States.

On appeal, the petitioner changes the nature and timeframe of training for the specialized knowledge position, stating that the classroom training was obsolete and the on-the-job training began years earlier than previously suggested. Specifically, the petitioner appears to claim that the beneficiary's classroom training was only completed as a prerequisite to the beneficiary being placed on the project on the United States and was not necessary for the acquisition of specialized knowledge. The petitioner indicates that the beneficiary began gaining his specialized knowledge training in 2005 during the initial development of the methodology, and therefore, the formal classroom training was not necessary to acquire the specialized knowledge. As discussed above, this claim is not only unsupported by evidence, but is contradicted throughout the record. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

For the reasons discussed above, the petitioner has not submitted probative, credible evidence to establish that the beneficiary was employed abroad in position involving the claimed specialized knowledge, and therefore, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary has been, and will be, employed in a specialized knowledge position. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

The AAO acknowledges that the beneficiary was previously admitted to the United States in L-1B status from April 2007 through April 2010 based upon issuance of an L-1 visa under the petitioner's approved Blanket L petition. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the U.S. Consulate approved the beneficiary's Form I-129S based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988).

## IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner had not met that burden.

**ORDER:** The appeal is dismissed.