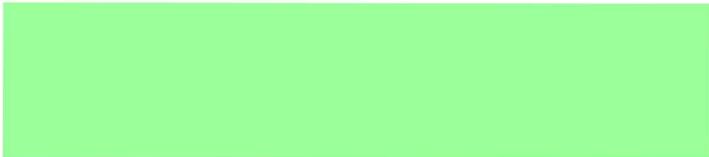


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **JUN 17 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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must 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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner filed the nonimmigrant petition to classify the beneficiary as an 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 is a computer software development and consultancy company with an affiliate, [REDACTED] located in India. It seeks to employ the beneficiary in the specialized knowledge position of senior systems analyst, and intends to assign him to work primarily offsite at the offices of [REDACTED] for a period of three years.¹

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed abroad or would be employed in the United States in a specialized knowledge capacity.

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 for the petitioner asserts that the record contains ample evidence establishing that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity. Counsel submits a brief and additional documentation in support of the appeal.

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 U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

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.

¹ The petitioner interchangeably refers to the proffered position as both "Senior Systems Analyst" and Senior Associate – Projects."

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 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.
- (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.

II. The Issues on Appeal

The issues to be addressed are whether the petitioner established that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has approximately 78,400 employees worldwide and approximately 16,700 in the United States. In a letter of support appended to the petition, the petitioner averred that it is a "leading provider of custom information technology ("IT") design, development, integration, and maintenance services primarily for 'Fortune 1,000' companies." Regarding its business model, the petitioner stated as follows:

[The petitioner] designs, engineers, and implements IT business solutions on a project basis for companies that are not in the IT sector. [The petitioner] is **not** a staffing or placement company, nor an agent that arranges short-term employment. Because [the petitioner's] clients lack the expertise to develop their own complex IT solutions, the clients have engaged [the petitioner] to develop their IT solutions. Since our clients are not in the IT services sector in the U.S., the placement of [redacted] employees at our clients' sites is not a form of staff augmentation for an IT provider.

(Emphasis in original).

The petitioner also described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that its employees "work as part of a 'virtual' team . . . at onsite client sites, who in turn focus on technical and account management at client locations." It further stated that it goes "far beyond" the established onsite/offshore model by offering an in-depth local management and consulting presence, comprised of onsite teams focused on the customer's business applications."

With regard to the beneficiary's position, the petitioner stated that he would be employed as a senior systems analyst working on the [REDACTED] project for the petitioner's client, [REDACTED]. The petitioner explained that this project is a system meant for automating insurance policy under writing and billing. The petitioner noted that the [REDACTED] project on which the beneficiary would be working is the same project to which the beneficiary is currently assigned at the petitioner's offices in India. Regarding the beneficiary's physical worksite, the petitioner claimed that he would work onsite at the client's location in Hartford, Connecticut.

The petitioner explained that in providing solutions to [REDACTED], its project teams and the constituent professionals allotted to each project would develop a specific domain, also referred to as "an area of control" or "sphere of knowledge," particular to a specific project. The petitioner further stated that, from project to project, the technology spectrum is quite disparate and may involve any combination of technologies including application servers, products and data warehouse tools, databases, languages, multiple platforms, and other complex systems.

According to the beneficiary's resume submitted in support of the petition, the beneficiary has worked on the [REDACTED] project for [REDACTED] for the past three years while employed with the petitioner's Indian affiliate.

The petitioner provided background information regarding the [REDACTED] project and the beneficiary's work on this project while in India. Specifically, the petitioner stated;

While currently working on this project in India, [the beneficiary] is working as a senior developer. He is responsible for overall execution of the project (Technical). He is involved in requirement understanding, technical design, coding, unit testing and reviews. He is responsible for task allocation, tracking, providing technical guidance to the team members. He is involved in design and development of the new product Modular Rewrite. He plays an important role in solving various technical problems. He is technically involved in Development of Excess Web application to be integrated with [REDACTED] frame work. [The beneficiary] is also involved in defect fixing for Modular and Excess. He is engaged in the POC for the new product [REDACTED] which is currently in the requirement phase. His technical design for each module in this project has added more value to the client. His strong technical and analytical skills have helped the project and the client.

Regarding the beneficiary's proposed transfer to the United States, the petitioner stated that the purpose of the transfer was to bring expertise to the U.S. that is not commonly held throughout the petitioner. The petitioner

stated that the beneficiary would apply the advanced and special knowledge he gained while working abroad on the Polaris project abroad, and described the duties to be performed in the United States as follows:

Modular Rewrite and Excess Implementation (20%)

- Integrate [redacted] framework into [redacted] application.
- Share the knowledge on [redacted] application, Qview, Quality Center to the project team.

Requirements Gathering (15%)

- Analyze the Business Requirements provided by the client on [redacted].Modular[.]
- Identify the GAPS in the requirements as per the prescribed business flow.

Onsite-Offshore coordination (20%)

- Allocate tasks to offshore team based on client's requirements and coordinating with the team.
- Reporting the progress of the project on a daily/weekly/monthly basis using [redacted], [a proprietary tool of the petitioner].
- Collect Project Metrics based on the progress.
- Reporting any deviation in the business flow of the application if any.

Technical Design and Coding (45%)

- Prepare Technical Design document as per the requirement[.]
- Schedule group design review meetings with customers and record the review comments. Pass the review comments to offshore team the design document is prepared by offshore otherwise [incorporate] those changes if it is done by me.
- Perform Requirement Traceability matrix.
- Review the code implemented by offshore team. Log the review comments and track it to closure.
- Schedule Code review meetings with customer, record the comments and track it to closure.

The petitioner also stated that the beneficiary's "concentrated focus on the development and implementation of this client's technology cannot be passed on to another candidate due to the intense and lengthy time period required to become deeply proficient with [redacted] business processes and related technology."

In addition, the petitioner stated that to serve as a senior systems analyst on the [redacted] project, an individual must have advanced and special knowledge of various technologies and processes such as MKS, Mercury Quality Center, VB.Net/C#, XML, Sql Server 2005, Crystal reports, and MIS. The petitioner provided brief descriptions of these processes and noted that the knowledge required for the position is "highly technical knowledge" which is "held by only certain individuals at Senior systems Analyst or higher level on the [redacted] project" and "not commonly held" throughout the company. The petitioner stated that the beneficiary gained in-depth knowledge of these processes while working on various projects for [redacted] and further claimed that this knowledge is not generally known within the petitioner or outside of the petitioner in the industry in general.

Finally, the petitioner claimed that the beneficiary completed 152 training hours as part of a formal training program and also acquired specialized knowledge through "informal trainings, knowledge transfer sessions and on the job experience using [the petitioner's] systems and tools." The petitioner identified the following training courses:

1. Microsoft.NET Design Patterns (24 hours)
2. Training on Project-Specific Details (40 hours)
3. Training on Tools specific to project (16 hours)
4. UML Rational. Unified Modeling Language (8 hours)
5. [Petitioner] Quality System (8 hours)
6. Function Point Estimation (8 hours)
7. Soft Skill Training (16 hours)
8. Microsoft.NET 3.5 and SQL Server 2000 (24 hours)
9. Omega.NET (8 hours)

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Science degree in Computer Science and a Master of Computer Applications degree. On his resume, the beneficiary lists his technical skills as: Windows 2000/XP, ASP.Net, VB.Net, C#, ASP, VB, SQL Server 2000/2005/7.0, and Oracle. He further states that he has approximately seven years of overall IT experience. The resume also includes a description of the [redacted] project to which the beneficiary has been assigned since the start of his employment with the petitioner.

The director found the initial evidence insufficient to establish eligibility, and consequently issued a request for additional evidence (RFE). The director instructed the petitioner to submit additional evidence to show that the beneficiary's knowledge is not commonly held by practitioners in the field. The director requested that the petitioner describe a typical work day, highlighting specific duties that require an individual with specialized knowledge. The director also requested, *inter alia*, further documentation with respect to the training provided to the beneficiary, information regarding the amount of time required to train an employee to fill the proffered position, and the number of similarly trained workers within the organization.

In response, the petitioner explained that the beneficiary, while working on the [redacted] project in India, "has accumulated project and technology specific expertise that is advanced and special." The petitioner noted that he "gained his advanced and special knowledge by performing requirement studies and by developing and implementing several highly sophisticated application support modules." The petitioner also supplemented the previously-submitted description of the beneficiary's proposed duties in the United States with specific references to processes and technologies the beneficiary would implement. In addition, the petitioner claimed that the beneficiary has developed two specialty tools for [redacted] namely: (1) the LOC tool, which provides lines of codes for a development application project; and (2) the Cross Impact tool, which is used for dependency mapping of Code and Database objects.

The petitioner went on to further describe the beneficiary's training, noting most of the beneficiary's knowledge has come from his experience working on the [redacted] project as well as from related company projects in the insurance vertical since the commencement of his employment with the petitioner in

April 2007. Nevertheless, the petitioner provided a new list of the training courses completed by the beneficiary, which included two additional training courses not included on the original list. Specifically, the petitioner claimed that the beneficiary completed significant coursework through the petitioner's internal "academy" as follows:

1. Know your Client (8 hours)
2. CCP for INS 21 (8 hours)
3. Billing Process Flow (8 hours)
4. P&C Insurance Industry business drivers (8 hours)
5. Policy Admin Process Flow (8 hours)
6. Security Guidelines – Do's and Don'ts (8 hours)
7. Business Segment and Product line (8 hours)
8. [REDACTED] Quality Policy (8 hours)
9. .Net developer track (72 hours)
10. [REDACTED] (8 hours)
11. Acceptable Use Policy Process in business Organization (8 hours)
12. Quick Test Professional (24 hours)
13. [Petitioner] Quality Systems (16 hours)
14. Business Etiquette (8 hours)
15. Boot Camp Training (16 hours)
16. CRM Testing Boot Camp (16 hours)

The petitioner also identified two other courses that were not a part of its "academy" training, namely: Core Values and Standards of Business Conduct (8 hours) and Oracle 9i PL/SQL (24 hours). The AAO notes that the new total for hours of coursework after the response to the RFE is 256, as opposed to the original claim of 152 hours.

Finally, the petitioner stated that there are 3241 systems analysts in the U.S. workforce, and 423 of these employees work in its insurance vertical. The petitioner also indicated that the beneficiary's technical training and experience cannot easily be transferred, and would require another individual to have at least one year of work experience with the petitioner and experience with its internal processes and procedures.

In summary, the petitioner claimed that the beneficiary's special and advanced knowledge may only be attained within the petitioner through direct work experience with the petitioner's process and tools and through project work for its clients such as [REDACTED] along with similar training to that of the beneficiary.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that it will employ him in a capacity requiring specialized knowledge. In denying the petition, the director noted that the beneficiary's knowledge of the [REDACTED] project and the processes and procedures used on this project appeared to be related more to internal [REDACTED] procedures than to proprietary tools and processes of the petitioner. The director concluded by stating that the beneficiary's knowledge did not appear to be distinguishable from other similarly-employed individuals in the industry.

On appeal, counsel for the petitioner asserts that the director's decision was erroneous, contending that the petitioner has submitted sufficient and detailed evidence of the beneficiary's specialized knowledge and the specialized knowledge capacity of the proposed position.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge position.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(1)(3)(ii). The statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. 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(1)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

A. Description of Job Duties

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). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The description of duties that the petitioner provided for the proffered position is entirely vague and generic. First, the AAO notes that the description does not appear to apply specifically to the [REDACTED] project, the claimed overseas source of the beneficiary's specialized knowledge. While the description of the overseas position clearly conveys that the beneficiary worked on the [REDACTED] project, the description of the proffered position includes no specific reference to similar details. Instead, the description is entirely nonspecific. Second, the petitioner repeatedly uses technical and abbreviated terms in the breakdown of duties and training, yet provides no explanation or further information regarding the nature of these terms or how they apply to the claimed specialized knowledge of the beneficiary and its application to the project in the United States. The pervasive use of acronyms and technical terminology, without explanation, does not assist the AAO in determining eligibility.

The petitioner's description of duties, therefore, does little to clarify exactly what knowledge is required for performance of the role of senior systems analyst, or how such knowledge will be applied. Specifics are plainly 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 fails to adequately articulate or document the manner in which the beneficiary has been and will be employed in a specialized knowledge capacity. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

B. Proprietary Tools And Methodologies

With regard to the specific claims on appeal, both counsel and the petitioner continually assert that the proffered position requires project-specific knowledge that the beneficiary gained in India and experience with the petitioner's internal processes and procedures. They conclude that the duties of the proffered position could not be performed by the typical skilled senior systems analyst specializing in either the petitioner's insurance vertical or in that industry in general.

The question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies, by itself, constitutes specialized knowledge. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner

demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and systems development projects. Initially, in its letter in support of the Form I-129, the petitioner stated that in order to serve as a senior systems analyst on the [REDACTED] project, a senior systems analyst must have "advanced and special knowledge" of various internal and external processes.

Additionally, the petitioner provided the beneficiary's resume for the record. The AAO notes that while the beneficiary may in fact use the petitioner's internal tools to track his project activities, no company-specific knowledge is mentioned anywhere in his resume. For example, the beneficiary lists the [REDACTED] project for [REDACTED] on his resume yet indicates that the project was executed using knowledge of third-party technologies such as VB.Net, ASP.NET, and SQL Server 2005.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their implementation in the [REDACTED] project. However, it is reasonable to expect all IT consulting firms to develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. The petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other IT companies. The petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition to the tools and methodologies discussed above, the petitioner also claimed that the beneficiary had knowledge of proprietary tools developed by the petitioner that are applicable to the project in the United States, including [REDACTED] and [REDACTED]. The petitioner claimed that the beneficiary's knowledge of these internal tools, as well as various hardware and software platforms which are used in the [REDACTED] project, has allowed him to play a major role in the project. The petitioner concludes that his concentrated focus on the development and implementation of the client's technology cannot easily be passed to another senior systems analyst. The record, however, contains no documentation, such as internal handbooks or promotional materials, which document the existence of these internal processes and platforms the petitioner claims form the basis of the beneficiary's special and advanced knowledge, and which it claims are essential to the performance of duties for [REDACTED]. Moreover, despite the listing of training received by the beneficiary which was submitted in support of the claim that his knowledge is specialized, there is no record of training being administered in any of these claimed internal processes. This lack of documentary evidence, coupled with the non-specific description of the duties to be performed in the United States, shed little light on the exact requirements for the beneficiary on the [REDACTED] project in the United States and whether specialized knowledge of these, or any similar processes or procedures, will actually be required. Again,

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. at 165.

C. Training

Turning to the training history of the beneficiary, the AAO notes that between April 2007 and July 2010, the petitioner claims that the beneficiary underwent formal training in the processes identified above. The AAO notes that the petitioner provides two conflicting accounts of the beneficiary's training: i.e., claiming he underwent 152 hours of training in its initial letter of support then subsequently amending this claim to a total of 256 hours.

In the initial letter of support, the petitioner claimed that he had 152 hours of formal training with the petitioner as follows:

1. Microsoft.NET Design Patterns (24 hours)
2. Training on Project-Specific Details (40 hours)
3. Training on Tools specific to project (16 hours)
4. UML Rational. Unified Modeling Language (8 hours)
5. [Petitioner] Quality System (8 hours)
6. Function Point Estimation (8 hours)
7. Soft Skill Training (16 hours)
8. Microsoft.NET 3.5 and SQL Server 2000 (24 hours)
9. Omega.NET (8 hours)

In response to the RFE, the petitioner provides additional evidence that conflicts with the claimed training offered to the beneficiary. Specifically, the petitioner claims that, contrary to the initial letter of support, the beneficiary has received 256 hours of formal training. In the chart, the petitioner claims that the beneficiary has received the following in-house training through the petitioner's academy:

1. Know your Client (8 hours)
2. CCP for INS 21 (8 hours)
3. Billing Process Flow (8 hours)
4. P&C Insurance Industry business drivers (8 hours)
5. Policy Admin Process Flow (8 hours)
6. Security Guidelines – Do's and Don'ts (8 hours)
7. Business Segment and Product line (8 hours)
8. [Redacted] Quality Policy (8 hours)
9. .Net developer track (72 hours)
10. [Redacted] (8 hours)
11. Acceptable Use Policy Process in business Organization (8 hours)
12. Quick Test Professional (24 hours)
13. [Petitioner] Quality Systems (16 hours)
14. Business Etiquette (8 hours)
15. Boot Camp Training (16 hours)

16. CRM Testing Boot Camp (16 hours)

The petitioner also identified two other courses that were not a part of its "academy" training, namely: Core Values and Standards of Business Conduct (8 hours) and Oracle 9i PL/SQL (24 hours).

Upon review, the AAO finds this evidence contradictory and confusing. First, it is noted that the list of courses submitted in response to the RFE is completely different from the list of courses submitted with the initial letter of support. While the AAO recognizes that a beneficiary may continue training after a petition is filed, the newly-submitted list incorporates courses allegedly taken prior to, not subsequent to, the petition's filing. In addition, the petitioner provides no explanation for the vast discrepancies between the original list of training provided. 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. 582, 591-92 (BIA 1988).

Even if the beneficiary's training history was firmly established, the record contains no evidence, other than an internal training certificate that provides only a basic listing of the courses claimed in the response to the RFE, to establish that the beneficiary actually completed the formal training claimed by the petitioner. The record is devoid of sufficient evidence to corroborate the petitioner's claim that the beneficiary actually completed the claimed 152 or 256 hours of formal training. Again, 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. at 165.

Regardless, the training list submitted in response to the RFE included minimal, if any, courses in proprietary or client-specific processes. This minimal information raises questions regarding the true nature of the beneficiary's claimed special and advanced knowledge. The record reflects that the beneficiary has been assigned to various projects for [REDACTED] and within the petitioner's insurance vertical since the commencement of his employment with the petitioner, thereby demonstrating that extensive experience and training was not a prerequisite prior to working on the current project and related projects. Absent evidence from the petitioner outlining the manner in which senior systems analysts are trained and the length of time required to become, as the petitioner claims, an "expert" in these processes, the AAO must conclude that other senior systems analysts in the insurance vertical have received similar training and perform similar duties to those of the beneficiary. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Again, the record appears to indicate that the beneficiary has been fully performing the duties of the senior systems analyst position since the date he was hired by the foreign entity. There is no indication that the beneficiary was employed as a "trainee" or any other position other than that of a senior systems analyst. Moreover, most of the courses he allegedly completed do not appear to constitute or contribute to specialized knowledge as contemplated by the regulations. Finally, the petitioner does not articulate or document how specialized knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge. Instead, the petitioner repeatedly asserts that knowledge is gained while working in a hands-on manner on various [REDACTED] projects.

Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in software testing technologies and appropriate functional or domain background for the project to which they will be assigned. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

D. Preponderance Analysis

The petitioner submitted lengthy statements in support of the petition and in response to the RFE which provide extensive detail regarding the nature of its business operations. However, it simultaneously provided varied claims with regard to the beneficiary's specialized knowledge that have not consistently explained the nature or specifics of the claimed knowledge, documented when or how he acquired such knowledge, or explained why such knowledge is necessary to the performance of his proposed job duties in the United States. As such, the evidence as a whole does not allow the AAO to conclude that the beneficiary possesses special knowledge by virtue of his training as a senior systems analyst working in the petitioner's insurance vertical, either compared to senior systems analysts working for the petitioner or compared to other senior systems analysts providing consulting services in the same industry segment.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

On appeal, counsel relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS. In the present matter, the most pertinent memorandum is the Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum). The Puleo Memorandum concluded with a note about the burden of proof and evidentiary requirements:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at page 4.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the evidence does not distinguish

the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among senior systems analysts in the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the petitioner failed to provide independent and objective evidence to corroborate such claims. 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. at 165.

It is reasonable to conclude, and has not been shown otherwise, that all senior systems analysts assigned to client projects must use the same tools to record and track project activities. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is advanced in comparison to that possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies, such that knowledge of such processes alone constitutes specialized knowledge.

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. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.