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)

[redacted]

DATE: MAY 13 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

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

The petitioner 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, an Iowa corporation, is a multinational kiln manufacturer and service company. The petitioner claims to be the parent of located in Canada. The petitioner seeks to extend the beneficiary's L-1B status so that he may continue his employment as its Senior Kiln Installation Instructor for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge or that he will 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 for review. On appeal counsel contends that the director's decision was based on incorrect applications of law and erroneous conclusions of fact.

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 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.

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.

I. The Issue on Appeal

The issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity.

The petitioner is an international kiln manufacturing and service company with 144 employees and gross income of over $38 million in the year prior to filing. The company has sales offices in seven countries for site-services work. The petitioner describes their operations as follows:

> [The petitioner] has built its reputation and business in the international markets on its discovery, and implementation of innovative and patented processes, specifically applied in [the petitioner's] kiln installation and alignment services, which constitutes up to 40% of [the petitioner's] business. Because the core of [the petitioner's] business and the key to its success in the kiln service industry involves the implementation of unique processes pioneered and used exclusively by [the petitioner], [the petitioner] has found it necessary to employ the services of highly specialized and experienced technicians, who ensure that the

high quality of services that [the petitioner] provides in the international markets is not compromised.

The petitioner stated the beneficiary will be working as a Senior Kiln Installation Instructor. The petitioner provided a brief explanation of the beneficiary's duties, stating that he "will be primarily responsible for implementing a manufacturing and installation standardization program." The petitioner described the beneficiary's experience, stating that he is "the most qualified candidate to train [the petitioner's] personnel in the United States." A copy of the beneficiary's resume also provided job duties for the position of Senior Installation Instructor. Specifically, the resume stated that the beneficiary supervised, trained and assisted field crews on repairs to rotary kilns and driers; attended safety and hazardous material training courses; and performed work in a timely manner to meet deadlines.

Additionally, the petitioner provided a two page explanation of the beneficiary's specific skills and prior projects with the foreign and United States employer. In the petitioner's initial support letter, the petitioner claimed the beneficiary was employed as a Senior Kiln Installation Instructor from 2002 to 2003, prior to his initial transfer in L-1B status. According to the petitioner, from 2003 to 2006 the beneficiary worked in the position of senior kiln installation instructor in L-1B status. Between 2007 and 2009 the beneficiary worked intermittently for the United States entity in L-1B status.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia,* evidence that the beneficiary has specialized knowledge and evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner provided documentation to describe how the position of senior installation instructor requires specialized knowledge of the products and procedures of the company. Counsel for the petitioner provided an explanation of the nature of the specialized knowledge position and how the beneficiary possesses specialized knowledge.

In a letter from the CEO, the petitioner explained that the beneficiary is an "A-class" technician at the top of three levels of service technicians employed by the company, but did not provide any further explanation or documentation of the company's technician grading system. The petitioner further explained that the beneficiary acquired over 18 years of experience in the construction industry and over the course of the past eight years "has acquired substantial and advanced level training, experience and expertise in [the company's] proprietary processes." A declaration from a retired "maintenance technician" independently attested to the use of "A-class" workers, who are "mechanical welders, technicians or alignment engineers with specialized training and over eight (8) years of experience in the industry." The petitioner's response also included evidence of a patent pending on the petitioner's "Thrust Monitor"; company brochures, web site print-outs and a maintenance services DVD.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position or that the beneficiary possesses specialized knowledge. In denying the petition, the director found that the beneficiary's training and experience with the petitioner's proprietary procedures, methodologies, and tools was insufficient to establish that he is an individual with specialized knowledge. In the alternative, the director found that the record does not establish that the beneficiary possesses a special or advanced level of knowledge in the kiln industrial field.

On appeal, counsel asserts that the evidence of record establishes that the beneficiary is employed in a specialized knowledge position and possesses specialized knowledge. Specifically, counsel asserts that the beneficiary "is a key person at [the petitioner's organization], in [the petitioner's] top echelon of workers, and he possess high level expertise in [the petitioner's] proprietary applications that is limited to only [the petitioner's] top tier workers." Counsel for the petitioner further states that the beneficiary has over eight years of "advanced experience in [the petitioner's] proprietary repair and installation techniques." Counsel for the petitioner concludes that the beneficiary is one of a small group of employees in the petitioner's overall organization that have an advanced level of knowledge or expertise in the organization's processes or procedures.

In support of the appeal, the petitioner provides: a letter from its CEO detailing the organizational ranking system, the nature of the specialized knowledge position, and the beneficiary's employment history; the minimum skill list for "A-rated" technicians; the minimum skill list for "B-rated" technicians; the minimum skill list for "C-rated" technicians; an organizational chart; a revised version the beneficiary's resume; documentation regarding clients, and technical information for current projects.

III. Analysis

Upon review, the AAO concurs with the director's decision and will affirm the denial of the petition. The petitioner failed to establish that the beneficiary possesses specialized knowledge and that he would be employed in the United States in a specialized knowledge capacity 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 will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(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(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.

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.

In the present case, the petitioner's claims are based on the first and second prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets as well as an advanced level of knowledge of the company's processes and procedures. The petitioner claims that its kiln installation service involves the application of proprietary processes for the alignment and analysis of rotary kiln equipment. As a senior kiln installation instructor, the beneficiary is claimed to be one of only a few employees in the petitioner's organization that possess the specialized knowledge require to oversee the installation process.

Upon review, the petitioner failed to consistently and credibly document both how and when the beneficiary acquired the specialized knowledge required for the position of senior kiln installation instructor. In the initial petition, the petitioner submitted a list of requirements for the beneficiary's position. The list states that a minimum of five years of experience "in the operations and maintenance of rotary kilns, dryers, and similar equipment" is required for a class "A" rated kiln technician. The petitioner also stated the position requires "[a]dvanced knowledge and expertise in the applications of [the petitioner's] proprietary repair and installation techniques."

Based on the petitioner's assertions regarding the training required for the position, the beneficiary's resume casts doubt on whether the claimed specialized knowledge training is actually required for the position of Senior Kiln Installation Instructor. According to the beneficiary's resume submitted with the initial petition, he worked as a "Millwright/Welder" from 1992 until he began working for the petitioner in 2002. The resume shows that the beneficiary first gained experience as a kiln technician in 2002 when he began working for the petitioner's organization. The beneficiary then worked as a kiln technician for one year, or part thereof, from 2002 to 2003. In 2003 he was promoted to the position of Senior Kiln Installation Instructor, which he currently holds. The

beneficiary, therefore, did not have five years of experience "in the operations and maintenance of rotary kilns, dryers, and similar equipment" at the time that he was promoted to the position of an "A" rated kiln technician, and may in fact have had less than one year of relevant experience. This fact raises questions regarding the petitioner's stated requirements for its various grades of kiln technicians. 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).

In response to the RFE, the petitioner stated that the beneficiary acquired the "necessary experience and specialized knowledge of [the petitioner's] services, processes and procedures, over the past (8) years of his employment with [the petitioner]." Furthermore, in describing the specialized knowledge position in response to the RFE, counsel for the petitioner states that it would take another "eight (8) years to train a new worker to acquire the wealth of experience and proprietary knowledge" that the beneficiary possesses. With respect to the beneficiary's qualifications, the petitioner stated in its letter in support of the appeal, that the beneficiary has been employed with the foreign affiliate since 2002, and over the "course of the past eight (8) years he has acquired substantial and advanced level training, experience and expertise in [the company's] proprietary processes."

The record is unclear as to when the beneficiary actually began working in the position of senior kiln installation instructor and whether he acquired the eight years of experience with the petitioner prior to his employment in the specialized knowledge position. The beneficiary's resume shows that he was working as a "Kiln Technician" for the foreign affiliate from 2002-2003. From 2003-Present, the beneficiary lists his position for the same employer as "Senior Installation Instructor." The petitioner's letters in support of the I-290B, and in response to the RFE, do not clarify when in 2003 the beneficiary was promoted to the position of "Senior Installation Instructor." In the petitioner's letter in support of the initial petition, however, the petitioner stated that "[s]ince January 2002, [the beneficiary] has been working at service facility in Canada, as a Senior Installation Instructor."

If the beneficiary in fact held the position from the time that he began employment with the foreign entity, there would have been no time for the beneficiary to acquire the required knowledge of the proprietary procedures the petitioner claims to require for the position. Furthermore, if the specialized knowledge position of Senior Kiln Installation Instructor requires eight years of experience with the petitioner, then the beneficiary did not have eight years of experience with the petitioner before working in the position either at the time of hiring with the foreign employer, or in 2003 when he began working for the United States organization as stated on his resume. 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).

Finally, the petitioner failed to respond to the director's request for evidence and therefore failed to establish that the position in the United States requires an advanced level of knowledge of processes and procedures of the company. Specifically, on February 12, 2010, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was

adjudicated. *See* 8 C.F.R. § 103.2(b)(8). The director requested *inter alia* a copy of an organizational chart showing the petitioner's organizational hierarchy and staffing levels for the beneficiary's immediate division including the beneficiary's subordinates. In response, the petitioner failed to provide the requested evidence. Instead the petitioner stated that there is no statutory required "for an L-1B specialized knowledge employee to supervise or manage subordinate employees." The petitioner now submits the requested organizational chart on appeal, along with evidence of the petitioner's grading system for technicians that also would have been responsive to the director's requests for evidence of the beneficiary's special or advanced duties and evidence as to how the beneficiary's training or experience compares to that of other employees within the company.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. 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). The director appropriately denied the petition, in part, for failure to submit requested evidence.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

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 the petitioner has not met that burden.

ORDER: The appeal is dismissed.