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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

[redacted]

MAY 3 0

DATE: Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 was incorporated under the laws of the State of Michigan and provides software consulting and development services. It is wholly owned by a Nevada Corporation which was incorporated in 1959. The petitioner is affiliated with , an organization that is also wholly owned by The petitioner seeks to continue the employment of the beneficiary in the United States in a specialized knowledge capacity, as a senior programmer analyst, for an additional period of two years. The petitioner indicates that the beneficiary will work primarily offsite at the Pleasanton, California worksite of its client, "the unaffiliated employer.")

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a capacity that requires specialized knowledge. The director further determined that the beneficiary would be placed at the worksite of the unaffiliated employer as labor for hire, contrary to the L-1 Visa Reform Act of 2004.

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 director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof.

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.

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 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

> 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 specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

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.

(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

A. Specialized Knowledge

The first issue to be addressed is whether the petitioner will employ the beneficiary in a specialized knowledge capacity.

Facts and Procedural History

On the Form I-129 (Petition for a Nonimmigrant Worker) the petitioner noted that its parent company provides software consulting and development services, employing 92,000 personnel worldwide, with 66 individuals employed at the "Pleasanton worksite." In the petitioner's letter appended to the petition, the petitioner stated that it provides "a broad range of information technology services, from advising client on strategic technology plans to developing and implementing custom-tailored solutions."

The petitioner added: "[t]he beneficiary's assignment in the United States is not part of an arrangement to provide labor for a third party, but involves an assignment to perform duties for [the petitioner] and requiring specialized knowledge specific to [the petitioner]." Specifically, the petitioner indicated that the beneficiary is currently working as a senior programmer analyst on its and that the beneficiary uses the petitioner's proprietary project management methodology The petitioner further stated:

> [The beneficiary] also uses the methodology for planning, enhancing, and implementing various interface systems, as well as preparing the accompanying documentation. He provides technical expertise on technologies used to plan and configure the application. He reviews the development, modification, and testing of the application to ensure project efficiency and resolves queries of team members and serves as a point of contact for [the petitioner] and [the petitioner's India affiliate's] teams. Using , he ensures an excellent quality of deliverables and high team productivity and efficiency in meeting deadlines for all assignments.

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[1] The petitioner identifies its methodology with a service mark. Although we note that registration is not required to use a service mark, we also observe that the petitioner has not provided documentary evidence that it has registered the methodology service mark with the United States Patent Trademark Office.

The petitioner noted that the beneficiary possessed a master's of information technology degree from the and a bachelor's of science degree from the The petitioner stated that while employed at the petitioner's affiliated company in India, the beneficiary used the petitioner's internal processes, methodologies, and procedures, including to carry out his duties. The petitioner indicated that the beneficiary, as part of the development team in India, used to set up the process for the project.

The petitioner also provided an overview of the methodology. The overview included statements that the methodology is used "to support multi-site project teams for application maintenance, support, and new development" and that it "incorporates best practices from the industry and standards' organizations." The petitioner stated that it will customize the process to meet customer requirements and that both the petitioner and the customer periodically review this process for effectiveness and improvements. The petitioner indicated that its "approach to undertaking application maintenance projects is comprised of distinct phases and timelines" including project startup, planning and initiation, knowledge acquisition, concurrent support, independent support, and steady state. The petitioner identified "the primary goal of the process is to transfer the application, business, technical and procedural knowledge of current in-house support staff to the [petitioner's] support team while maintaining expected service and performance levels." The overview indicated that the methodology has been developed "primarily for engagements driven by Service Level Agreement (SLA)."

Continuing in the overview of the methodology, the petitioner stated the methodology "is the encapsulation of [the petitioner's] best practices of multi-site project execution and global delivery capability" and "is utilized in conjunction with [the petitioner's] proprietary application maintenance methodology to realize success with off-site maintenance projects." The petitioner stated that the "basic principles that underlie this methodology are shared responsibility, the on-site team, knowledge transfer, and continuous improvement." The petitioner further explained that the "methodology provides a structure and a process for the transfer of knowledge to both the on-site and off-site teams, for both the petitioner and the customer to play complementary management roles, and to continuously improve the applications after it [*sic*] is transitioned to the off-site facility."

The director issued a request for further evidence (RFE), requesting, *inter alia* evidence of the specialized knowledge position in the United States and evidence of compliance with the L-1 Visa Reform Act of 2004. Among other items, the director specifically requested more detailed information regarding the beneficiary's duties in the United States, including the beneficiary's knowledge of the petitioner's product or service, special or advanced duties, and the training, if any, the beneficiary would provide. The AAO finds that, in the context of the record of proceeding as it existed at the time the RFE was issued, the request for additional evidence was appropriate. Not only did the director seek required initial evidence, but the evidence requested was material in that it addressed the petitioner's failure to submit documentary evidence substantiating the petitioner's claim that it had specialized knowledge work for the beneficiary for the period of temporary

employment requested in the petition and that it was in compliance with the L-1 Visa Reform Act of 2004. [2]

In response, the petitioner (through its parent company's counsel) asserted that the beneficiary's duties included not only improving the client's existing system but also creating new software modules for the systems. The petitioner contended that the beneficiary's knowledge of , his training in applying to create new system applications for the and his experience creating system applications for the rendered the beneficiary a specialized knowledge employee. The petitioner claimed that the methodology is its service marked methodology and that only the petitioner's employees may obtain knowledge of the methodology. The petitioner stated that its employees who will utilize undergo training in the methodology. The petitioner provided a 35-page manual outlining the methodology. The petitioner amended its previous description of the phases of the off-site maintenance methodology by renaming the phases: Start up, Knowledge Acquisition (Onsite Transition), Knowledge Transfer (Off-shore Transition), and Steady State.

The petitioner noted that the beneficiary had received training on the use of to create new system applications for the The petitioner provided a certification from the senior manager, human resources of the petitioner's parent company, certifying that the beneficiary underwent three weeks of training on [*sic*]" in November 2005. The petitioner also indicated that the beneficiary gained further expertise on creating applications for the system by working on the project for over four years. The record included the beneficiary's work history, also prepared by the senior manager, human resources of the petitioner's parent company. The senior manager certified: the beneficiary worked for the foreign affiliate from October 2005 to June 2007; the beneficiary worked as a Team Leader for the APL system project from October 2005 to February 2006; the beneficiary "worked on developing system applications for Kaiser since March 2006 through the application of our exclusive proprietary knowledge, " and from March 2006 to June 2007, the beneficiary worked as a team member for the Kaiser eConsult, eChart, and CareTeams applications project. The senior manager noted that the beneficiary had performed the following duties for both the APL system project and the Kaiser eConsult, eChart, and CareTeams applications:

- Utilize methodology to develop new applications:
- Applied methodology to develop detailed design document;
- Employed methodology to conduct testing on developed codes;
- Provided training to team members;
- Utilized to provide production support for the system;
- Conducted troubleshooting during system error;
- Employed to review and modify deliverables.

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[2] The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. *See* 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The senior manager indicated that the beneficiary had also coordinated efforts of the onsite and offsite teams in relation to the .

The petitioner added that after informs it of changes or improvements that need to be made to the eConsult Suite of applications, the petitioner analyzes the requirements and maps them into technical details through the Infrastructure and Environment Setup Process of and creates new applications to make the required changes and improvements. The petitioner further explained that the system is divided into two parts: the first part is conducted offsite in India where the foreign affiliate creates business processes and system applications based on project requirements; and the second part is conducted onsite in the United States where the petitioner gathers business requirements and data for the project and tests the established processes and applications. The petitioner concluded that as the application of is the key to the petitioner's competitiveness in the market and because the beneficiary has gained exclusive knowledge of through his training as well as expertise in applying to create system applications for the the beneficiary possesses special knowledge that is valuable to the petitioner's competiveness.

The petitioner also asserted that the beneficiary is one of the key employees working on the project due to his specialized knowledge in creating new system applications for the system. The petitioner noted that the beneficiary's duties involve utilizing to create and test new system applications for the The petitioner averred that the beneficiary is the only employee on the four-person project in the United States who has substantive experience in applying

The petitioner provided the Master Service Agreement with dated April 4, 2002 which identified a list of supported applications but which did not include Additional statements of work, signed in March 2003, covered minor enhancement and budgeted investment projects and level 2 core support for specific applications but again did not list any of applications. The petitioner also provided a letter signed by wherein, the manager noted: had contracted for the services of [the beneficiary] as a Senior Programmer Analyst to work on our project at our facility located in [Pleasanton, California]" and that the beneficiary's duties include:

- Uses the methodology for planning, enhancing, and implementing various interface systems, as well as preparing the accompanying documentation.
- Provides technical expertise on technologies used to plan and configure the application.
- Reviews the development, modification, and testing of the application to ensure project efficiency per guidelines.
- Resolves queries of team members and serves as a point of contact for [the petitioner's] and [the parent company's] India teams.
- Using , he ensures an excellent quality of deliverables and high team productivity and efficiency in meeting deadlines for all assignments.

Upon review of the evidence in the record, the director denied the petition.

On appeal, counsel for the petitioner asserts that the petitioner is unaware of any competitor that has a process or system that is similar to that of the petitioner's methodology and the director's suggestion that other companies appear to have similar processes and reliance on this assumption is an abuse of discretion. Counsel contends that the evidence submitted establishes that is a unique and proprietary methodology and the "beneficiary's advanced knowledge of would establish that the beneficiary will work in a position requiring specialized knowledge." Counsel also contends that the petitioner creates new applications to make changes and improvements and test current applications and that the beneficiary, due to his specialized knowledge in system applications for the system, will utilize unique software, firmware or hardware products that were conceptualized, designed, developed, published, sold, and maintained by the petitioner. Counsel asserts further that the beneficiary is the only member of the U.S. team who has the training and experience in applying to create system applications for the project.

Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or 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 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.

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. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its products or processes require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

Counsel's assertion that the director abused her discretion when noting that other companies appear to have similar processes, methodologies, and tools is not persuasive. The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. Rather, the petitioner repeatedly references a particular methodology without articulating with specificity how the use of this particular methodology is different than that used by other software consulting providers who also employ an onsite-offshore business model for their client projects. According to the petitioner's initially submitted Securities and Exchange Commission (SEC) Form 10-K Annual Report, at page 4 "a substantial number of companies offer services that overlap and are competitive with those offered by [the petitioner]," and certain companies "may have greater capacity to perform services similar to those provided by the Company." The Form 10-K mentions that the petitioner's main competitors offer onsite-offshore software services. It is reasonable to believe that other successful software consulting companies have also encapsulated their project management processes and best practices into similar methodologies to ensure the success of their multi-site client projects.

Therefore, contrary to counsel's assertion, the director properly considered whether the petitioner had articulated the nature of its particular methodology and its use in multi-site operations. The director properly concluded that the record did not include evidence establishing that the petitioner's methodology involves more than the use of the best practices and standards in the software consulting industry. 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*, *supra*.

In the present matter, the petitioner claims both that the beneficiary "has a special knowledge of the company product and its application in international markets" and that the beneficiary has an advanced level of knowledge of the company's processes and procedures. The petitioner asserts that it is the beneficiary's special and advanced knowledge of its methodology and his experience in applying the methodology to the specific project that results in the beneficiary serving in a specialized knowledge capacity. Although counsel on appeal also claims that the beneficiary, due to his specialized knowledge in system applications for the eConsult Care Delivery system applications, will utilize unique software, firmware or hardware products that were conceptualized, designed, developed, published, sold, and maintained by the petitioner, the petitioner has not specifically identified this software, firmware or hardware. The record does not include documentary evidence in support of this assertion.[3] Without

[3] The petitioner submitted a copy of a 2002 Services Agreement between the petitioner and and two subsequent statements of work signed in 2003. These documents do not include evidence that the petitioner developed, sold, or delivered any specific products to Further, the delivery of such products, if any, would result in ownership of the software, firmware or hardware products, not the petitioner. Moreover, in the letter signed by the

documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that, other than , the only tools or technologies in which the beneficiary is claimed to have experience in relation to the unaffiliated employer's projects are Oracle, DB2, Ms SQL Server, UNIX AIX, WSAD, Websphere Server, CICS, VC++, and Rational Software Architect, none of which are designed or developed by the petitioner.

The petitioner's descriptions of the beneficiary's training, work experience, and responsibilities do not include the type of technical details that would support the petitioner's claim that this individual beneficiary's knowledge is specialized within the industry or advanced within the petitioner's organization. The crux of the petitioner's claim is its methodology is proprietary and the beneficiary's training and experience in utilizing this methodology has resulted in the beneficiary's specialized and advanced knowledge. However, the petitioner does not establish what specific aspect of the methodology could not be conveyed to similarly trained and experienced software professionals. Rather, the petitioner provided a 35-page employee manual on the methodology which does not include complex information. We also observe that the petitioner included evidence that the beneficiary attended a three-week training on this methodology a month after he entered into employment with the foreign affiliate. It is reasonable to believe that all the petitioner's programmer analysts and other software specialists would be routinely trained on this methodology upon entry into employment with the petitioner or its foreign affiliate and prior to being assigned to client projects. The petitioner and its foreign affiliate rely on this methodology when providing "multi-site project teams for application maintenance, support, and new development." As the petitioner noted the methodology "incorporates best practices from the industry and standards' organizations." Again, the petitioner has not demonstrated that its "proprietary" methodologies and tools, while effective and valuable to the petitioner, are more than customized versions of best practices standards used in the industry.

The petitioner also relies on the beneficiary's four-years of experience working on the applications to establish that the beneficiary's knowledge is special and advanced. However, the fact that the beneficiary possesses very specific experience with a particular client's project does not establish that the beneficiary's knowledge is indeed special or advanced. The petitioner has not identified with any specificity the aspects of the eConsult Care Delivery applications project that distinguish it from any other software support and maintenance project carried out by the petitioner's consulting group or other software companies offering services in this sector. Any experienced programmer analyst within the petitioning organization, as observed above, would reasonably be familiar with the petitioner's internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more clients and the client's products or systems. We note that the beneficiary's duties for the unrelated APL system project do not appear to be demonstrably different than those performed for Kaiser. United States Citizenship and Immigration Services (USCIS) cannot find that an employee's

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manager does not specify that the beneficiary will be assigned to work on any particular software, firmware, or hardware products.

knowledge of a client project, and the relationships established through working on such a project, without more, are sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any information technology consultant in possession of project experience.

Moreover, the petitioner has not provided detailed and credible evidence to demonstrate that the beneficiary possesses advanced knowledge of the methodology, or that such knowledge is required for the project to which he is assigned. Rather, the evidence of record reflects that programmer analysts and other software professionals employed by the petitioner's affiliate in India undergo a short period of training in project management methodologies, after which they are deemed prepared for offshore client project assignments requiring the application of the general computer and software expertise. The petitioner has not made any attempt to distinguish between an "advanced" user and a regular user or explained why the beneficiary's project assignment would require advanced knowledge of the methodology. 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 explained above, the fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to one component of a specific client project is not sufficient to establish the beneficiary as an employee possessing 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.

B. L-1A Visa Reform Act

The remaining issue addressed by the director is whether the petitioner's placement of the beneficiary at the unaffiliated employer's worksite satisfies the requirements of the L-1 Visa Reform Act.

One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by

documentary evidence; neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. at 534.

In this matter, the beneficiary will be stationed primarily at the worksite of in Pleasanton, California. The petitioner, in response to Question 13 on the Form I-129 Supplement L, answered "Yes" when asked: "Will the beneficiary be stationed primarily offsite (at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent)?" Accordingly, the petitioner acknowledges the beneficiary will be stationed primarily at the offices of an unaffiliated entity.

Under section 214(c)(2)(F)(i) of the Act, the petitioner must also establish that the beneficiary will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. The director acknowledged that the petitioner, in response to the RFE, had provided sufficient evidence demonstrating that it controlled and principally supervised the beneficiary.

The director found, however, that the petitioner failed to establish that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

The petitioner's arguments with reference to the beneficiary's specialized knowledge have been discussed at length above and will not be repeated here. We also observe that the letter signed by specifically states: had contracted for the services of [the beneficiary] as a Senior Programmer Analyst to work on our project at our facility located in [Pleasanton, California]." Accordingly, the unaffiliated entity is contracting for the services of a senior programmer analyst. Although the manager recognizes that the beneficiary will use the petitioner's methodology in the performance of his duties, does not require it. In the same letter, the manager noted that the minimum education, training, and experience necessary to perform the job duties is a bachelor's degree or equivalent. The manager does not reference knowledge of the methodology as required.

A review of the submitted master service agreement and statements of work also fail to identify the methodology as a required component of the education or training of the individuals provided to it by the petitioner. The record does not establish that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which requires specialized knowledge that is *specific to the petitioning employer.* Section 214(c)(2)(F)(ii) of the Act.

On appeal, counsel asserts that "[t]he record demonstrates that is not an IT service provider," and that it clearly "hires companies like [the petitioner] to use their proven methods and process tools to develop system applications to meet its business needs." Counsel maintains that the purpose of the beneficiary's placement at the unaffiliated employer's worksite is "not to merely fill its ranks but to work as a specialized employee to fulfill the obligations of [the petitioner] under the MSA."

Counsel's assertions are not supported by the record. The Service Agreement in the record is

between the petitioner and [redacted] which, according to the recitals in the agreement, "is a part of and provides information technology services to the health maintenance organization known as [redacted] The original agreement required the petitioner to provide support for 64 of the client's existing applications. One of the submitted Statements of Work calls for the petitioner to serve as the point of contact for "second level Software problems for [redacted] National Operations Help Desk." Clearly, the unaffiliated employer does in fact have its own IT systems and it has contracted with the petitioner to assist with the support and maintenance of these systems.

As noted above, the Service Agreement and the Statements of Work pre-date the beneficiary's current project assignment by several years and do not mention the eConsult Care Delivery applications or the petitioner's [redacted] methodology as products or services to be provided as part of the agreement. The director specifically requested "copies of contracts, statements of work, work orders, service agreements between the petitioner and the unaffiliated employer or 'client' for the services or products to be provided." The documentation provided indicates that the petitioner provides support and routine maintenance and upgrades to the client's existing programs, and does not include any reference to the beneficiary's claimed specialized knowledge. If the petitioner has other contracts or Statements of Work pertaining to the beneficiary's project assignment, it has opted not to provide them. 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)).

While it is possible that the beneficiary here possesses knowledge that is related to both the petitioner and the unaffiliated employer's product or service, it is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that requires knowledge specific to the petitioner. Here, the petitioner has failed to provide corroborating evidence demonstrating that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. For this additional reason, the petition cannot be approved.

The AAO acknowledges that the beneficiary was previously approved for an L-1B visa pursuant to the petitioner's Blanket L petition. The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that a visa petition was approved on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference. Moreover, each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding 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).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish that the beneficiary would be employed in a position requiring specialized knowledge and that the petitioner failed to satisfy the requirements of the L-1 Visa Reform Act of 2004. If the previous petition was approved based on the same or similar evidence as contained in the current record, the approval would constitute gross error on the part of the consular officer who reviewed the beneficiary's application under the Blanket L program. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. The AAO finds that the director was justified in departing from the prior approval and denying the instant request for an extension of the beneficiary's status.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. The petition will remain denied.