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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 14 2014 Office: VERMONT SERVICE CENTER

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 is a Delaware corporation engaged in the provision of software applications development and support services. It is wholly owned by , an Indian corporation. The petitioner seeks to extend the beneficiary's employment in the United States in a specialized knowledge capacity, as a system analyst, for an additional period of three years. The petitioner indicates that the beneficiary will work primarily offsite at the Jersey City, New Jersey worksite of its client, The Depository Trust & Clearing Corporation ("DTCC" or "the unaffiliated employer.") Accordingly, 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 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 beneficiary's use of a proprietary tool requires specialized knowledge that is not merely incidental to the job duty requirements of the proposed position.

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.
>
> (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 primary issues to be addressed on appeal are whether the beneficiary's proposed position with the U.S. entity will be in a specialized knowledge capacity and whether the petitioner's arrangement with DTCC is made for the purpose of providing labor for hire and thus contrary to the L-1 Visa Reform Act of 2004.

A. Factual Background and Procedural History

The record shows that petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on March 13, 2013. The petitioner stated that the beneficiary worked for its Indian parent company as a systems analyst during which time he "provided his expertise to improve [the foreign] organization's processes and increase efficiency." The petitioner stated that the beneficiary will continue to serve as a systems analyst in the United States where he will continue his assignment to the client, at the client's Jersey City, New Jersey location.

In a letter dated March 11, 2013, the petitioner explained that the proffered position requires the beneficiary's use of his specialized knowledge of the petitioner's proprietary tool, [redacted] to create web applications that are easy to maintain and will improve the client's business process. The petitioner stated that the beneficiary will serve as the primary point of contact on [redacted] which will involve the following key responsibilities:

- Work with client to determine project scope, Objectives and Goals to develop Process Oriented Model which will be a road map for the project.
- Create new reports and work on enhancement of existing reports.
- Meet various teams involved in business development and decide best method and process of implementing [redacted]
- Identify infrastructural needs and create strategies for better infrastructural utilization[.]
- Analysis of security and compliance needs of the project[.]
- Meeting with different stakeholders to know their reporting needs.
- Defect logging reports/processes.
- Create various Use Cases and Test Cases.
- Design and develop applications using best practices[.]
- Work with business users in case there are any changes in the existing process or reports.
- Provide necessary access rights to users for code review[.]
- Reduce report execution time and better performance.

Additionally, the petitioner stated that the beneficiary has specialized knowledge, which is required to perform the following job duties: merge data from different environments, track new and prior data based on a given time frame, manage software and hardware effectively, extract data from multiple systems and ensure data integrity, set up a system to send automated mails periodically, create a system that can conduct "dependency analysis" for hundreds of objects, know "Finance Domain to understand the business," build "Audit Information" for each report, create and/or modify reports to be part of the project, ensure "data governance," "use specialized tools" to detect patterns and trends, manage multiple jobs based on priority and

dependency, set up a logging system for tracking defects, design a component to allow multiple users to view reports in the desired formats, ensure "successful deployment from one environment to another" through tools used to write scripts, release new solutions and archive old reports to prevent future use, "create [a] single report using multiple systems to give user a single view of [the] data," and understand financial terms so as to be able to estimate the cost of any new product.

The petitioner claimed that the beneficiary had a combined total of fourteen months of classroom and on-the-job training, which qualify him as a subject matter expert (SME) in , which enables "successful implementation of business solutions by the source" and is described as "a unique framework not used by any other organization." The petitioner explained that while "regular employees" receive training related to specific modules, the beneficiary's training in "is relating to the process and procedures that will be followed while implementing solutions across the company." The petitioner that the beneficiary has been trained to enhance productivity and reduce project costs by creating effective controls to "manage the process solution." The petitioner further stated that the beneficiary would use his specialized knowledge of the petitioner's proprietary tool – – to improve the business and IT environment." The petitioner also provided the following percentage breakdown to establish the beneficiary's time allocations:

- Process Assessment, definition gathering and requirements analysis: 30%
- Designing solutions for architecture: 15%
- Solution Implementation: 35%
- Coordination with the team: 10%
- User acceptance support: 10%

Additionally, the petitioner provided a statement of work (SOW) issued by on February 7, 2013. The statement covers the beneficiary's employment with for a six-month time period – from January 1, 2013 through June 30, 2013 – and indicates that the beneficiary will assume the position of senior developer where he will be responsible for the following functions:

a) Study Functional Design Document and[,] if applicable, provide update inputs[.]
b) Study Technical Design Document and[,] if applicable, provide update inputs[.]
c) Prepare program specifications and unit test scenarios as needed for coding[.]
d) Produce application code and perform unit testing for the same[.]
e) Produce any other necessary documentation as needed for integration of developed software within Customer environment[.]
f) Jointly perform assembly test with Customer team[.]
g) Log and track defects identified during Review Period and Warranty Period[.]
h) Fix all reported defects during Review Period and Warranty Period[.]
i) Provide necessary inputs to Customer pertaining to schedule and effort estimation for the assigned tasks[.]
j) Participate in status review meetings and provide weekly status reports[.]
k) Configuration management, as applicable[.]
l) Assist in migrating code between various testing, PSE & production environments[.]

The petitioner emphasized that the beneficiary's knowledge in these areas surpasses that of most of his peers and is not readily available in other candidates, who may not be eligible to receive the type of training that the beneficiary has received in the use of the petitioner's framework tool. The petitioner indicated that expertise with this tool can only be gained through lengthy training consisting of classroom learning and hands-on job experience.

The petitioner also submitted letters from the foreign entity's delivery leader and the U.S. petitioner's project manager, respectively, who addressed the beneficiary's qualifications. The first individual, an employee of the foreign entity, stated that the beneficiary performed work for prior "clients like and which involved major customization and integration between ERP systems and legacy systems by using web services and The project manager for the petitioning entity stated that the beneficiary "possesses demonstrable skills in requirement analysis, system integration, Web Services and Development Framework." The latter individual also referred to the beneficiary's work with which he stated involved

The director determined that the information provided was not sufficient to warrant approval of the petitioner and therefore issued a request for additional evidence (RFE) dated March 25, 2013. The director instructed the petitioner to submit additional evidence that clearly shows that the beneficiary's knowledge is different from other practitioners in the IT industry. The director requested that the petitioner identify the tool that involves specialized knowledge and explain how this tool is applied in the international marketplace and why someone else in this field cannot perform the beneficiary's job duties. The petitioner was also asked to describe the beneficiary's specialized knowledge duties and state the minimum time required to obtain the specialized knowledge, including training and experience accrued after the completion of training.

In response to the RFE, the petitioner submitted a detailed letter dated June 14, 2013 in which the petitioner again focused on the beneficiary's expert knowledge and ability to use the framework to improve the client's business process. The petitioner stated that the beneficiary's proposed duties would include the following:

1. Facilitates, develop[s], code[s], test[s], publishes and maintains the Application requirements[.] 50%

2. Accomplishes and facilitates Application requirements and measurement tasks to completion[.] 12.5%

3. Defines, documents and resolves all Application related issues[.] 12.5%

4. Assists the Application to re-engineer processes, develop[s] new procedure and implement[s.] 10%

5. Produce[s] and maintain[s] system documentation and Standards documentation[.] 2.5%

6. Coordinate[s] with the Team leaders to develop detail plans and requirements[.] 5%

7. Attend[s] Meetings by management and client as needed[.] 2.5%

8. Fill[s] the timesheets as per the work assigned[.] 2.5%

9. Communicat[es] with Project management[.] 2.5%

The petitioner also stated that the beneficiary will perform the following job duties that will require specialized knowledge:

- Make [s]ure that all reporting applications are a part of Single Service portfolio[.]
- Ensure that the concerned departments adhere to Service Level agreements.
- Ensure that priority reports can use more hardware than less priority report at [the] same time.
- Make sure that data is consistent across all environments.
- Make sure that [i]mportant decision of the design should [sic] be made quickly[.]
- Create the system to analyze the [i]mpact of any change[.]
- Create the use cases to capture every possible scenario of an action[.]
- Check the use of existing reports[.]
- Create a fund management system[.]
- Ensure [d]ata [g]overnance[.]
- Do the [d]ata mining to detect pattern and trend[.]
- Schedule the jobs periodically based on dependency[.]
- Defect [l]ogging and [t]racking[.]
- Empower user for customization of reports[.]
- Monitor the activities of users and derive technical benefits out of them[.]
- Create the deployment and maintenance scripts[.]
- Ensure that [the] old report will be phased out after the new report[.]
- Accommodate growing data in data warehouse and propose necessary solution[.]
- Cost estimation for any new product[.]

The petitioner also discussed the means by which the beneficiary acquired specialized knowledge, stating that training takes one year to complete. However, the petitioner continued, stating that the training involves a "minimum of 3 months of classroom training as well as one year of rigorous practical hands-on training," which indicates that approximately fifteen months of training is required. The petitioner explained that the training is divided into modules, each of which requires 2-3 weeks of classroom training and which is generally accompanied by the employee's work on a related project that implements various phases of The petitioner stated that in order to qualify to receive training a candidate must have at least three years of work experience in the finance, banking, or insurance industry as well as 2-3 years of work experience in implementing and developing "Enterprise applications."

Additionally, the petitioner distinguished between the training and the training received by the company's other employees, explaining that "[t]he training provided to regular employees are [*sic*] relating to the specific modules where the candidates are taught about the various functionality available in their application. However[,] while providing training for candidates in framework, the training is

relating [*sic*] to the process and procedures that will be followed while implementing solutions across the company." The petitioner further stated that ' training focuses on best practices approach as directed by model. It focuses on [c]apacity and availability [m]anagement for [d]atabase, reports and data accuracy." Lastly, the petitioner claimed that the beneficiary will use "the extensive knowledge gained in the methodology to assist the client in designing, development and customizing software systems per the client needs."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary will be employed in a capacity involving specialized knowledge. The director determined that the petitioner failed to submit evidence to support the claim that the beneficiary is a subject matter expert (SME) or that the beneficiary's training is different from that of other employees. The director found that the beneficiary's time period of training and work experience do not establish that the beneficiary now has specialized knowledge and further determined that the amount of training the beneficiary received does not appear to be disproportionate to the training received by others in the IT industry. The director concluded that the petitioner failed to document how the beneficiary's knowledge of the processes and procedures of the petitioning organization is substantially different from, or advanced in relation to, the knowledge of others similarly employed by the petitioner or in the IT industry.

On appeal, counsel asserts that the director erred in denying the petition and contends that is a specialized knowledge tool that is proprietary to the petitioner. Counsel points out that the beneficiary has been trained to use this tool, which is presently required during the beneficiary's work at the client's work site. Counsel disagrees with the director's conclusion that the tool is merely incidental to beneficiary's job duties at the proposed worksite. Although counsel checked off Box B on the petitioner's Form I-290B, Notice of Appeal or Motion, indicating that an appellate brief and/or additional evidence would be forthcoming, the record reflects that no brief or additional evidence was submitted. As such, the record will be considered complete as presently constituted.

B. Specialized Knowledge

Upon review, the petitioner has not established that the beneficiary has specialized knowledge or that he will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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(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.

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.

Counsel's assertion that the beneficiary possesses specialized knowledge by virtue of his use of petitioner's proprietary tool – during the course of his employment is not persuasive. The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. Although, the petitioner submitted a statement describing the criteria required for qualifying for raining and repeatedly claimed that the beneficiary is one of few employees within the petitioning organization who qualified for and received such training, the petitioner did not specify how many of its claimed 4000 employees, particularly those who are currently working in the United States, have been similarly trained.

Furthermore, while the petitioner claims that the beneficiary has received a combined total of fourteen months of classroom and hands-on training in the record does not establish that this amount of training is actually necessary to perform the beneficiary's stated job responsibilities. Rather, the record shows that the beneficiary assumed a position that involved the use of several months prior to his commencement of any training. Specifically, in a letter which listed the beneficiary's professional experience, the petitioner indicated that the beneficiary's first position involving the framework environment commenced in November 2007. However, according to the June 11, 2013 statement of the foreign entity's deputy general manager of human resources, the beneficiary's training in commenced in January 2008. Given that the beneficiary's position at that time was identified as "system analyst/team lead" it is unclear how the beneficiary would have been able to assume a leadership role without full understanding of how to use the framework unless the tool was either not entirely integral to the beneficiary's given set of responsibilities, or the use of the tool does not actually require at least one year of training as stated by the petitioner. This inconsistency between the evidence and the petitioner's claims has not been explained. 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).

Moreover, it is reasonable to determine that, even when the beneficiary was ultimately ready to fully incorporate his knowledge of the company's proprietary tool, the fact that he was a team leader was, in itself, a sufficient indicator that other employees, who were likely the beneficiary's subordinates in the project he was leading, were also able to use and implement in carrying out the tasks the project required. Once again, the facts presented raise questions as to the number of other employees within the petitioner's organization who were similarly trained in using and implementing the framework. The petitioner's documentation indicates that was conceptualized in 2006 with the objective of speeding the development cycle time for web/Enterprise applications, reducing errors and rework efforts and improving productivity. While is the petitioner's own framework, the product documentation indicates that it was "built upon the framework and component APIs provided by industry leading players" and leveraged "existing standards." Given the petitioner's stated purpose of designing this framework to improve the efficiency of the company's Enterprise application development activities, the petitioner's assertion that only a small number of its employees are actually trained to use is not adequately explained or supported.

Based on the evidence provided, the AAO is unable to determine how many others within the same organization received similar training as that offered to the beneficiary. Merely claiming that the beneficiary has specialized knowledge of a proprietary tool or that he is "one of the few" trained to use it is not sufficient to establish that the knowledge he has is truly specialized. 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)).

Furthermore, as noted above, the fact that the beneficiary commenced using framework in his position as system analyst/team leader many months prior to having completed the fourteen months of training he is claimed to have received, calls into question whether the fourteen months of training was actually necessary in order to learn how to use and implement the tool. The petitioner did not explain this anomaly and thus failed to establish how much classroom training, if any, was actually necessary prior to commencing the use of in completing client projects. As noted, the record indicates that was built on a "framework and component APIs provided by industry leading players" and leverages "industry standards." Since the evidence does not establish that the beneficiary completed training in prior to working with it as a team lead, it reasonable to believe that an experienced software professional who has worked with other application frameworks would be familiar with some portion of the industry standard technology incorporated into The record does not adequately support the petitioner's claim that an extensive period of training is actually required to achieve proficiency with this framework.

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 that its framework is proprietary and that the beneficiary's training and experience in

utilizing this framework has resulted in the beneficiary's specialized and advanced knowledge. However, the petitioner does not establish what specific aspect of the [redacted] framework could not be conveyed to similarly trained and experienced software professionals within the IT industry. While the petitioner places great emphasis on the beneficiary's experience in using [redacted] it is unclear just how much formal training the beneficiary actually received before he commenced his implementation of this proprietary tool. Based on the evidence on record, it appears that a considerable portion of the beneficiary's training was actually hands-on experience gained by using [redacted] on client projects.

Moreover, given [redacted] framework's claimed positive impact on the petitioner's client projects it is reasonable to believe that a number of other software specialists within the petitioning organization would be routinely trained on the use of this tool upon entry into employment with the petitioner or its foreign affiliate and prior to being assigned to client projects involving the development of [redacted] applications. The petitioner has not demonstrated that its proprietary framework and tools, while effective and valuable to the petitioner, are more than customized versions of best practices standards used in the industry. Therefore, the beneficiary's knowledge of this framework alone is insufficient to establish that the knowledge he possesses is special or advanced. The petitioner must establish that qualities of the company's proprietary or internal tools require the employee to have knowledge beyond what is common in the company or the industry.

The petitioner also relies on the beneficiary's experience working on the current client's project using the petitioner's [redacted] framework to establish that the beneficiary's knowledge is special. 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 current 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 similarly experienced systems analyst within the petitioning organization would reasonably be familiar with the petitioner's internal tools 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. United States Citizenship and Immigration Services (USCIS) cannot find that an employee's knowledge of a client project, without more, is sufficient to establish that the employee has 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.

C. 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 DTCC in Jersey City, New Jersey. 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 record shows that the petitioner, in support of the petition, 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 regard to the beneficiary's specialized knowledge have been discussed above and will not be repeated here. In reviewing the statement of work (SOW) that was submitted in support of the initial petition, it is shown that neither the petitioner's intellectual property nor "third party materials" were applicable to the beneficiary's proposed position. In fact, the SOW indicates that the beneficiary is being contracted to work at location in the role of a senior developer. Accordingly, the unaffiliated entity is contracting for the services of a senior developer. There is no mention in the SOW or master service agreement to indicate that the contracting entity – – requires the beneficiary to use or any other proprietary product, to fulfill the terms of the SOW, which states that with regard to the scope of work to be performed, "The Vendor Personnel will provide Services pertaining to application design, development and testing in compliance with Customer's processes and requirements for projects."

Additionally, in reviewing the list of environments the beneficiary will work with in his proposed off-site position, the petitioner named a number of third-party technologies, including J2EE, Java, JSP, JavaScript, DB2, and Websphere 6.1, in addition to As neither the master service agreement nor the SOW specifically identify what portion of the beneficiary's position will require him to work with as opposed to the other six named tools or environments, the AAO cannot determine whether working with the petitioner's proprietary tool will be more than incidental to the services he provides to the client. In fact, there

is no indication in the Statement of Work that client has contracted for products or services that require the application of any knowledge of as no specific framework or methodology is required.

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. While counsel claims that the beneficiary's "use of [is not merely incidental to the duties of the position," this assertion is not supported by the record. Without 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).

Therefore, 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. 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, however, 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). 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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.