



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 18 2014 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) to classify the beneficiary as an intracompany transferee in a specialized knowledge capacity pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a subsidiary of [REDACTED] located in the United Kingdom. Both companies are engaged in software sales and consulting. The petitioner seeks to employ the beneficiary in the position of Technical Product Specialist and Lead Consultant for a period of three years.¹

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the director misunderstood its explanation regarding the beneficiary's claimed specialized knowledge, which led to the erroneous denial of the petition. The petitioner submits a brief and copies of previously submitted evidence in support of the appeal.

I. THE LAW

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

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

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

¹ The petitioner has employed the beneficiary in this position since November 2012 pursuant to an approved Form I-129 granting him H-1B status. The petitioner requests a change and extension of his nonimmigrant status.

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.

Finally, the regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (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. FACTS AND PROCEDURAL HISTORY

The petitioner is a subsidiary of [REDACTED] a United Kingdom company established in [REDACTED] which is described in the record as the world's leading reseller of [REDACTED]. The United Kingdom company employs 35 workers and achieved sales of approximately \$25.3 million, while the petitioner has 12 employees with sales of \$1.9 million in 2012.

In an addendum to the Form I-129, the petitioner stated that the beneficiary was employed by its foreign parent company as an SAP Business One Senior Consultant from April 2010 until October 2012, where he performed the following duties:

- Advise client staff on all aspects of SAP Business One Financial, Logistics, Services, and CRM process and systems design/configuration and implementation, identifying different financial and non-financial reporting requirements and design/develop reports within SAP Business One, Crystal Reports, to support all requirements;
- Configure SAP Business One systems in all areas;
- Design, build and test [REDACTED] modules, acting as principal design architect for Sapphire modules;
- Design, build and test Serduct;
- Responsible for keeping product up to date and introducing new features allowing product to be competitive;
- Act as principal design architect for Crystal Reports 'Management reports Package', set of reports for Financial and Managerial purposes;
- Responsible for design, build, training and developing product.

The petitioner indicated that the beneficiary's duties in the United States as Technical Product Specialist and Lead Consultant will include the following:

- Responsible for ongoing input in the building, designing, and testing of [the petitioner's] unique SAP Business One modules, particularly those that [the beneficiary] developed. These modules are the proprietary products of [the petitioner];
- Drive [the petitioner's] development of new and unique additions to the SAP Business One suite of products;
- Build a team of specialists to facilitate this growth;
- Educate [the petitioner's] consultants, local staff and customers in the use of existing . . . proprietary software modules;
- Advise client staff on all aspects of SAP Business One Financial, Logistics, Services and CRM process and systems design/configuration and implementation, identifying different financial and non financial reporting requirements and design/develop reports within SAP One, Crystal Reports to support all requirements. Configure SAP Business One system in all areas;
- Participate in the full implementation of SAP Business One from gathering specifications, developing business process, training client staff, migrating data, supporting implemented system;
- Design, develop, modify, document, test, software applications and systems;
- Provide pre-sales assistance and demonstrations;
- Document customers' business requirements;
- Direct the installation of software for customers;
- Implement and configure software for customers;
- Remotely support customers in their use of [the petitioner's] proprietary software.

The petitioner submitted a statement from the chief executive officer of the foreign entity, [REDACTED] who provided the same foreign duty description attached to the Form I-129. The CEO's letter emphasized that the beneficiary "acted as principal design architect in the development and specification of [the petitioner's] SAP

Business One modules." Specifically, he indicated that these modules include: Vision (Q & A) Serduct, Mail Merge, Intercompany, Extended Analysis, Advanced BIN locations, Revenue Deferral, and US Oil and Gas, and provided a brief description of each module.

Mr. [REDACTED] explained that the modules are "adjuncts to the main SAP Business One product set" and are written within a .NET framework using the SAP Business Developer Toolkit (SDK). He stated that the beneficiary has a deep understanding of all three components of the SDK, as well as the SAP Business One platform and "the Infor Vision Serduct," and that he "played a key role in the development and specification of [the petitioner's] products."

Mr. [REDACTED] submitted a second statement in his capacity as the petitioner's CEO. He explained that SAP Business One is intended for small to medium-sized businesses and, particularly in the United States, is not as widely known as SAP's ECC platform, which is used by very large organizations like [REDACTED]

Mr. [REDACTED] noted that the two SAP platforms share no components and have a completely different code base. As such, he emphasized that the knowledge and skills required to implement and support SAP Business One are unique and unrelated to those possessed by consultants who are familiar with "big SAP." He stated that "we do not, therefore, have the pool of local resources to call on that we would were we working with that product." He went on to explain that the petitioner has a number of U.S.-based customers using modules developed by its parent company "with no one locally who has the depth of understanding and knowledge of them that [the beneficiary] has."

Mr. [REDACTED] further stated that the beneficiary is suited for the Technical Product Specialist and Lead Consultant position because he "played a key role in the specification, development and delivery" of many of the company's modules, and has the following knowledge which is also critical for the role: SAP Software Developer Toolkit, Infor Vision Serduct, SAP Business One, Microsoft SQL, Microsoft TSQL; Microsoft Visual Basic, SAP Data Transfer Workbench; a background in finance and accounting, and experience in managing his own business. Mr. [REDACTED] explained that the beneficiary will be able to continue to develop and support the petitioner's modules while building a team that can "introduce these modules to the US market and indeed to help them implement them for customers there." The petitioner provided a list of ten U.S. customers who already use the petitioner's internally developed modules.

The petitioner's supporting evidence included promotional materials regarding its complementary "Add-ons" to SAP Business One, including product information for Intercompany Trading, Extended Analysis, Mail Merge, BIN Locations, and Extended Analysis. The petitioner also provided copies of invoices for products and services provided to its U.S. customers. There are references in the invoices to the sale of Intercompany Trading, Extended Analysis, and Vision Q&A, some of which date back to mid-2010, within a few weeks of the date the beneficiary joined the foreign entity.

The petitioner also submitted what appears to be the official job description/job listing for the beneficiary's position in its New York office. The description indicates that the position requires a certified SAP Business One Consultant with at least six years of experience in SAP Business One implementation, solution architect experience and 10 years of international ERP implementation experience. The other listed requirements for the position include: detailed knowledge of Vision (Q&A) for SAP Business One reporting; excellent

commercial and technical awareness, strong customer relationship skills, experience with pre-sales consulting, experience with requirements analysis and project definition; experience with installation and configuration of SQL database and SAP Business One software, and detailed knowledge of Vision (Q&A) reporting, Crystal Reporting suite and MS SQL query based reporting. The job posting indicates that detailed knowledge of the petitioner's proprietary modules (Intercompany, Extended Analysis, Mail Merge, Advanced Bin Location and Revenue Deferred) "would be preferred."

The petitioner provided a copy of the beneficiary's resume, his diploma and transcript from a Polish university, and his professional certificates, indicating that he is an SAP Business One Implementation Consultant, and an SAP Certified Application Associate in SAP Business One 8.8. The beneficiary's resume indicates that he worked as an SAP Business One Senior Consultant for [REDACTED] in Poland from 2005 to 2010, as a self-employed ERP Consultant from 2002 to 2005, as a finance director for [REDACTED] in Poland from 1999 to 2002, and as an ERP Consultant and ERP Department Manager for [REDACTED] beginning in 1996.

The director issued a request for evidence (RFE) advising the petitioner that its initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge or that he had been and would be employed in a capacity requiring specialized knowledge. The director suggested that the petitioner provide additional information regarding the beneficiary's previous and proposed positions and the claimed specialized knowledge, such as an explanation of how the knowledge required for this position is different from that applied in other similar positions, a more detailed description of the beneficiary's claimed specialized knowledge, an explanation as to how the petitioner's products, systems or services are "special" or how the beneficiary's knowledge of the petitioner's processes and procedures is "advanced," and information regarding how long it would take to acquire the specialized knowledge the beneficiary possesses.

In response to the RFE, the petitioner submitted two additional statements from Mr. [REDACTED] one further describing the beneficiary's previous role in the United Kingdom, and one describing the proffered position in the United States. With respect to the U.K. position, Mr. [REDACTED] provided essentially the same list of duties as those provided at the time of filing, and noted that "[a]round 25% of [the beneficiary's] time was spent in specifying [the foreign entity's] modules, with a further 50% spent in developing and in producing documentation. The remainder of his time was taken up by supporting their use by our customers." He emphasized that the beneficiary joined the foreign entity with extensive knowledge and experience that he used to design and develop modules, based on his background in software development, business and experience with SAP Business One software development tools. Mr. [REDACTED] explained that the petitioner's internally-developed modules differentiate it from its competitors, and that its overall SAP Business One business "has been positively affected by [the beneficiary's] efforts to a substantial degree." He mentioned that the Vision (Q&A) Serduct is very successful and is included with most of the company's SAP Business One sales, while the Intercompany and US Oil and Gas modules have improved the development of international business.

Mr. [REDACTED] further stated that the beneficiary possesses knowledge and skills that differentiate them from other professionals in the industry who seem to possess similar credentials. He stated that his knowledge is different because: (1) he specializes in SAP Business One and not the more widely used SAP platform; (2) he

has taken a key role in developing the petitioner's own proprietary software to complement SAP Business One; and (3) his knowledge of the SAP Business One development toolkit and his grasp of business requirements and practices make him difficult to replace. Mr. [REDACTED] explained that "the minimum time required for [the petitioner] to train a new employee with the skills and knowledge to develop [the petitioner's] SAP Business One Modules is at least one year" if that individual already possesses software development experience in the .Net platform, is familiar with accounting and finance systems, and has an accounting background.

The petitioner submitted an organizational chart for the foreign entity's SAP Consultancy Team, which shows that beneficiary as one of seven employees reporting to the Global Services Director. The petitioner also attached position descriptions for the other members of the team, along with their educational levels and salaries. The beneficiary is listed as "SAP Business One Product Specialist and Consultant" while all other members of the department were SAP Business One Consultants performing duties identical to one another and earning between £48,000 and £68,000. The beneficiary is the only member of the team whose duties reference any software/module development duties.

With respect to the beneficiary's U.S. position, Mr. [REDACTED] provided a second statement which reiterated much of the information provided at the time of filing and in the above-referenced letter submitted in response to the RFE. The petitioner also provide an organizational chart and job descriptions for the other employees in the beneficiary's department in the United States, including a junior implementation consultant, and two SAP Business One Consultants who perform the same duties as the beneficiary's team members in the foreign entity.

Finally, the petitioner submitted a letter from Dr. [REDACTED] who was asked to provide an advisory opinion as to whether the beneficiary possesses specialized knowledge of the petitioner's "unique products, processes and procedures." Dr. [REDACTED] stated:

Over the course of his career with [the petitioner's group], [the beneficiary] has developed specialized knowledge of the company's unique SAP Business One solution, in addition to having a deep understanding of [the company's] other business modules. In fact, [the beneficiary] has been instrumental in the development of numerous [REDACTED] modules, and he has played a substantial role in the success and growth of SAP Business One, making him invaluable to the company. At present, there is no person at the company's American subsidiary . . . who can match [the beneficiary's] level of knowledge and understanding of Sapphire-developed modules. . . .

* * *

[The beneficiary's] advanced knowledge within [the petitioner's group] can be directly attributed to his expertise in .Net framework and the SAP Business One Platform, which are both utilized in module construction. In addition, he possesses knowledge and skills in Infor Vision Serduct, Microsoft SQ, Microsoft TSQL, Microsoft Virtual Basic, SAP Data Transfer Workbench, and an impressive background in finance and business. However, it

cannot be emphasized enough that [the petitioner's] modules are its own unique products requiring knowledge of not only an uncommon SAP platform but also [the petitioner's] proprietary software, much of which [the beneficiary] has taken a key role in developing.

Dr. [redacted] went on to state that the beneficiary's knowledge of the petitioner's proprietary products, processes and customized systems is "more specialized than that of all other [petitioner] employees." He also stated that the beneficiary's "specialized skill set makes him truly unique in the software industry," as the petitioner's SAP Business One modules are proprietary.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he had been employed abroad or would be employed in the United States in a capacity requiring specialized knowledge. The director found that the beneficiary's knowledge is of a general nature and not significantly different from that possessed by similarly employed workers within the organization or within the industry. The director further determined that the petitioner's "narratives and brochures regarding SAP Business One are not sufficient evidence to establish ownership of the described technology; which is the basis of your petition."

On appeal, the petitioner asserts that the director erred as a matter of fact, as the decision reflects a lack of understanding of the distinction between the SAP Business One platform and the petitioner's modules which complement and serve as add-ons to the platform. The petitioner further asserts that the director did not follow agency guidance on the legal standard for specialized knowledge as set forth in a 1994 memorandum from former Immigration and Naturalization Service (INS). *See* memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Specialized Knowledge," March 4, 1994 (Puleo Memorandum). The petitioner asserts that had the director comprehended the claimed specialized knowledge and applied the proper legal standard, she would have concluded that it had established by a preponderance of the evidence that the beneficiary possesses specialized knowledge.

The petitioner further contends that "SAP Business One software is unmarketable as a standalone product" and explains that "an entire industry has been built around the design and development of modules that serve as adjuncts to the SAP platforms." The petitioner emphasizes that the petitioner's unique modules are its proprietary products, and that the beneficiary's "instrumental role" in the development of these modules is "specialized" as his knowledge is noteworthy and uncommon in the industry, valuable and exclusive to the petitioner, and because its complexity renders it not easily transferable.

The brief submitted on appeal discusses a non-precedent AAO decision involving an SAP ERP Consultant whose employer sought L-1B classification, noting that the AAO dismissed the appeal in that case, in part, because the beneficiary would be merely implementing SAP modules, but had not personally worked on the design and development of the modules. The petitioner further asserts that "[the beneficiary] is not merely implementing or using an already-designed product for customers like other SAP Consultants in his . . . team and the SAP ERP Consultant in [the non-precedent decision]; rather, [the beneficiary] is a principal architect in designing and building the product that the SAP Consultants implement, customize and test for customers." The petitioner states that the beneficiary's knowledge of its products is also uncommon within the company based on his role in the development of modules such as Vision (Q&A) Serduct, Mail Merge, Intercompany,

Extended Analysis, Advanced BIN locations, Revenue Deferral, US Oil and Gas, and Crystal Reports Management Reports Package.

The petitioner emphasizes that record establishes that the beneficiary's knowledge is complex and not easily transferable, noting that he was hired by the foreign entity as a senior consultant with 14 years of experience in the ERP field and five years of experience in the "lesser known" SAP Business One suite, as well as professional certifications in SAP Business One and expertise in the .Net framework and other experience that allowed him to develop and design the petitioner's own SAP Business One modules. The petitioner contends that "the skills required to design and develop these modules "could not be transferred to an ordinary SAP Business One Consultant after the mere passage of time or simply revealing the information to them," but rather it would take the petitioner one year to train someone who arrived at the company with the beneficiary's expertise to function within a specialized knowledge capacity.

The petitioner concludes by asserting that a proper understanding of the submitted evidence and proper application of the legal standard reveals that the beneficiary has been employed abroad and would be employed in the United States in a qualifying capacity.

III. ANALYSIS

The primary issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a specialized knowledge capacity.

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 processes or products require this employee to have knowledge beyond what is common in the industry.

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. In the present case, the petitioner claims that the beneficiary possesses both special and advanced knowledge of several of the petitioner's proprietary SAP Business One modules, which are offered to its clients along with the sale of SAP Business One.

In examining the specialized knowledge capacity of the beneficiary, USCIS will look to the petitioner's description of the job duties. *See* 8.C.F.R. § 214.2(l)(3). The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses, or that the position requires, "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The petitioner has submitted a consistent description of the beneficiary's proposed U.S. position, but has been less clear in describing the nature of his role with the foreign entity. The petitioner initially referred to his foreign position as "SAP Business One Senior Consultant" and indicated that the beneficiary was responsible for both module development duties and for typical SAP consultant duties, such as advising clients on all aspects of SAP Business One processes and systems configuration and implementation, identifying reporting requirements, configuring all aspects of the system, and participating in full SAP Business One implementations.

In response to the RFE, the petitioner added "product specialist" to the beneficiary's foreign job title and indicated that 75% of the beneficiary's time was devoted to either specifying, developing and documenting the petitioner's add-on modules, with the remaining time spent supporting their use by customers who use the modules. There was nothing in the original description to suggest that the beneficiary allocated 100% of his time developing and supporting the petitioner's modules or performing duties that are completely distinct from other SAP Business One Consultants working for the foreign entity, which was the claim made in response to the RFE. When responding to a request for evidence, a petitioner cannot materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities.

Further, given that the beneficiary's "instrumental role" in the development of certain proprietary SAP Business One add-on modules is central to its claim that he possesses both special and advanced knowledge, the petitioner has provided few details regarding the beneficiary's actual duties in this regard, beyond noting

that he acting as "principal design architect" for several modules. 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)). Simply stating that his role was "instrumental" or that he was the "principal design architect" is not sufficient to meet the petitioner's burden to describe how and when the beneficiary gained the claimed specialized knowledge, particularly because, as discussed below, there is evidence in the record that undermines the petitioner's claims that the beneficiary actually designed and developed all of the SAP Business One modules attributed to him.

The foreign entity hired the beneficiary on April 26, 2010. The petitioner does not indicate when its partnership with SAP began, but, given that the petitioner's group is the world's leading re-seller of this platform, it is reasonable to believe that the relationship had been ongoing at the time the beneficiary was hired. Further, given counsel's claim that the SAP Business One platform is "unmarketable" as a standalone product, it is reasonable to believe that the foreign entity has been developing SAP Business One modules for the duration of its relationship with SAP.

The petitioner indicates that the beneficiary was the principal design architect behind the Extended Analysis, Intercompany, and Vision reporting modules; however, the record contains invoices for the sale of these modules to U.S. customers dated as early as May 2010 and August 2010. It is unclear how the beneficiary could have developed three add-on modules that were being actively marketed to clients within a few weeks or months of his date of hire by the foreign entity. 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).

As such, the petitioner's vague statements that the beneficiary played an instrumental role in the development of certain modules, without more, are insufficient to establish that the beneficiary actually developed the claimed modules. The Board of Immigration Appeals has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility). The petitioner has not submitted any evidence of the beneficiary's involvement in the design of its proprietary products beyond providing several narrative statements from the group's CEO. Absent evidence of the beneficiary's role in the development of the petitioner's products, the record does not support the petitioner's assertion that the beneficiary possesses the claimed advanced knowledge of these modules.

The petitioner's claims are further confused by its response to the director's request that the petitioner specify how long it would take someone to gain the knowledge and skills required to perform the duties the beneficiary performed for the foreign entity. The foreign entity's CEO responded that if the company were to hire someone who possessed exactly the same knowledge the beneficiary had when he was hired, it would require one year to train that person to develop its proprietary modules. At the same time, the petitioner has not indicated that the beneficiary himself received any company training upon joining the foreign entity. In

fact the petitioner claims that the beneficiary immediately stepped into a senior consultant role that also involved principal design architect duties for the company's proprietary products. The petitioner indicates that many of the company's most successful products were developed by the beneficiary himself throughout his two-year tenure with the foreign entity, despite evidence in the record indicating that at least some of these products already existed in 2010.

Overall, due to the discrepancies addressed, the record does not support a finding that the beneficiary possesses special or advanced knowledge as a result of his role in leading the development of the company's proprietary products.

Nevertheless, we do not doubt that the beneficiary possesses knowledge of the petitioner's proprietary modules, even if the record contains insufficient evidence to establish that he actually designed and developed these products. The evidence submitted shows that the petitioner's customers typically purchase one or more modules along with the SAP Business One product, and thus it is reasonable to believe that all SAP Business One consultants in the company would need to be able to customize, implement and support these products and could not rely entirely on general knowledge of the third-party SAP Business One platform. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The record reflects that the petitioner has developed add-on modules to increase the functionality and customization capabilities of the basic SAP Business One platform. The petitioner indicates that the modules are developed using the SAP Business One software developer toolkit based on the .NET framework, and has not claimed that any proprietary knowledge is needed to develop the modules. In fact, counsel indicates that "an entire industry has been built around the design and development of modules that serve as adjuncts to the SAP platform." As such, merely stating that the petitioner developed its own modules is insufficient to establish that the knowledge possessed by its SAP Business One consultants is different or uncommon compared to the knowledge possessed by similarly qualified consultants in its industry. Notably, the job posting for the beneficiary's U.S. position indicates that the role requires, first and foremost an SAP Certified Business One Consultant with six years of end-to-end implementation experience, a bachelor's degree, and knowledge of financial processes. The job listing indicates that knowledge of the petitioner's own proprietary modules is "preferred," which suggests that an experienced SAP consultant who is not intimately familiar with the petitioner's products, but who otherwise has the technical and business skills to develop and implement SAP modules, could nevertheless perform the duties of the position.

Further, the petitioner has not otherwise claimed that knowledge of and experience with its proprietary modules alone necessarily constitutes specialized knowledge, and it has not claimed that other SAP Business One consultants responsible for implementing the modules are considered to have specialized knowledge. Rather, the petitioner has consistently claimed that the beneficiary is unique among its SAP Business One consultants because he possesses the skills and knowledge needed to develop add-on modules, while the other consultants are only able to customize, implement and support the modules. Overall, the record does not establish that knowledge of the petitioner's proprietary modules alone constitutes specialized knowledge,

as it has not been shown to be special or uncommon within the company. Further, the petitioner has not indicated that its proprietary modules are significantly different from those offered by other SAP Business One consulting firms. The record does not establish, for example, how much training its newly-hired consultants receive in the company's proprietary technologies in order to successfully customize and implement them for customers. As noted above, the petitioner has not indicated that the beneficiary received any training when hired by the foreign entity, as his skills and experience gained outside the company had adequately prepared him to perform his assigned duties.

The petitioner's advisory opinion letter from Dr. [REDACTED] essentially repeats the statements provided in the petitioner's own letters. Dr. [REDACTED] does not indicate what information he reviewed to reach his conclusion that the beneficiary's knowledge is specialized, nor does he reference the regulatory and statutory definitions of "specialized knowledge." USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795. Dr. [REDACTED] speaks unequivocally of the beneficiary's key role in developing several modules, while other evidence in the record, namely the above-referenced customer invoices from 2010, suggest that at least some of these modules were developed before the beneficiary joined the company. We have considered his opinion, but it has been given less weight for these reasons.

On appeal the petitioner relies on the Puleo memorandum and asserts the beneficiary qualifies pursuant to the standards set forth therein, noting that he possesses knowledge that is not generally found in the industry, that is valuable to the petitioner's competitiveness, that can only be gained through prior experience with the petitioner's parent company, and that cannot easily be transferred or taught to another individual. We note that the Puleo memorandum also states:

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

Here, the petitioner failed to submit evidence to support its assertions that the beneficiary himself designed and developed many of the SAP Business One modules that it markets and sells to customers. As this role in the development of the company's technology forms the basis of the petitioner's claim that the beneficiary possesses specialized knowledge, the petitioner did not meet its burden. Further, the petitioner's evidence

does not support a conclusion that any knowledge of its proprietary SAP Business One modules amounts to specialized knowledge. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The beneficiary is clearly a highly skilled and experienced SAP Business One consultant, however the petitioner did not adequately support a claim that the beneficiary's combination of experience in SAP Business One technologies and software development tools, background in business and finance, and knowledge of its proprietary modules has resulted in his possession of knowledge that is different or uncommon compared to similarly employed workers in the industry or within the petitioning company. As discussed, the petitioner's claim that the beneficiary possesses specialized knowledge is primarily based on its claim that he developed many of the petitioner's proprietary modules during his two-year tenure with the foreign entity, a claim that fails on an evidentiary basis.

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 or that has been employed abroad or would be employed in the United States in a specialized knowledge capacity. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

IV. CONCLUSION

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.

ORDER: The appeal is dismissed.