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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 6 2014 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke the approval of the petition and ultimately issued a notice of revocation due to the petitioner's failure to overcome the grounds for revocation. 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, to classify the beneficiary as an L-1B 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, a North Carolina corporation established in February 2007, states that it engages in "shipbuilding related consulting service." It claims to be a subsidiary of [redacted] located in China. The petitioner seeks to extend the beneficiary's employment in the specialized knowledge position of "welding supervisor" at an unspecified offsite work location.

The petition was initially approved by the Vermont Service Center on August 23, 2012. The director later revoked his approval of the petition on December 18, 2012. The director found that the evidence submitted by the petitioner in response to a Notice of Intent to Revoke, was not sufficient to establish that the beneficiary was employed in a specialized knowledge capacity. The director further concluded that the petitioner had failed to demonstrate that the beneficiary had been employed by the foreign entity for at least one of the three years prior to the filing of the petition. Lastly, the director found that the petitioner did not establish that the beneficiary's assignment to various client locations would not constitute "labor for hire" as defined in 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 contends that the petitioner had provided "a multitude" of evidence indicating that the beneficiary is employed in a specialized knowledge capacity. Further, the petitioner submits additional evidence on appeal to support its claim that the beneficiary was employed with the foreign entity for at least one year out of the three years prior to the approval of his previous L-1B petition. Finally, counsel asserts that submitted client contracts establish that the beneficiary does not act as labor for hire.

I. THE LAW

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

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering

services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

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

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
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> (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. SPECIALIZED KNOWLEDGE CAPACITY

The first issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether he is employed with the petitioner in a specialized knowledge capacity.

A. Facts and Procedural History

The petitioner filed the Form I-129 on July 3, 2012. The petitioner stated that it is a wholly owned subsidiary of the foreign entity, a large state-owned ship building company whose "main business is the design, manufacture and repair of both domestic and foreign civil vessels." The petitioner indicated that it currently provides a wide range of consulting services to various shipyards throughout the United States, including "demonstrations and the implementation for permanent adoption of advanced shipfitting and welding techniques recently developed by [the foreign entity]." The petitioner asserted that these techniques include: one-sided welding of plate seams/butts which result in high deposition rates and low distortion of the welded assembly; new processes for high-efficiency welding techniques, including automatic flat fillet weld, vertical fillet weld, horizontal weld and flat automatic joint welding; and new shipbuilding welding technology that adopts flat section fitting, amongst other claimed exclusive techniques. The petitioner stated that its consults provide instruction on use of recently developed welding equipment and special performance welding material.

The petitioner stated that the there is a high demand for their consultants who have knowledge of the specialized knowledge asserted above, among them the beneficiary who acts as a welding supervisor in the United States. The petitioner provided an expert opinion from a engineering professor, who discussed the beneficiary's employment history. The opinion states that the beneficiary has more than fifteen years of work experience and that he began work as a welder with the foreign entity in 1995. The letter further states:

> Since December 2006, [the beneficiary] has been employed with the [foreign entity] as a Welding Supervisor. In this position [the beneficiary] provides technical guidance to lower level field engineering personnel, performs and manages verification activities, and revises internal welding and material specifications. [The beneficiary] also supervises and trains employees, and diagnoses faults or malfunctions in addition to reporting causes and solutions.

The expert opinion concluded that "on the basis of the concentrated nature of [the beneficiary's] work and training in Mechanical Engineering and related areas," the beneficiary's academic and experiential qualifications are comparable to an individual with the equivalent of a Bachelor's degree in mechanical engineering. The professor from the offered that his conclusion was based upon original documents provided by the beneficiary.

The director approved the petition on August 23, 2012. Later, on October 31, 2012, the director issued a notice of intent to revoke (NOIR) referencing a site visit to the foreign entity made by the United States Department of State's (DOS) , which passed the information it collected along to the DOS who in turn provided this information to the Vermont Service Center. The NOIR stated that the DOS Fraud Prevention Unit spoke with the foreign entity's human resources department and that it was "unable to confirm a number of applicants ever worked for the parent organization or any other foreign corporate affiliates." The Fraud Prevention Unit noted that several of the petitioner's employees gave

conflicting statements regarding their work histories and were unable to describe their prospective positions in the United States.

On the basis of the consular report, the director requested that the petitioner submit additional evidence. Specifically, the director asked that the petitioner provide additional evidence to establish that the beneficiary acts in a specialized knowledge capacity, including a detailed description of the beneficiary's duties; an explanation as to why each of the beneficiary's duties requires specialized knowledge; a description of the processes, procedures, tools and/or methods used by the beneficiary; an indication as to how long it takes to train an employee to the same level of the beneficiary and how many other employees possess knowledge similar to the beneficiary; and an explanation of how the beneficiary's training differs from training provided to other employees within the company. Further, the director requested that the petitioner provide a record from the company's human resources department detailing how the beneficiary gained his specialized knowledge, including documentation of pertinent training courses completed by the beneficiary, their durations, completion dates and certificates of completion.

In response, the petitioner's president stated in an additional support letter that "specialists from our parent company, [the foreign entity], are trained in shipbuilding techniques which are available in no other shipyard in the world," and which "greatly increase the quality and efficiency of the shipbuilding process." Specifically, the petitioner's president explained that the expertise of its welders is based in "specific methods of vertical and horizontal welding" which are handled by hand, rather than by machine. He continued to state that these "revolutionary techniques" included certain "subfields" of the shipbuilding process, such as vertical/horizontal position welding, manual welding of a flat plate, confined space welding, welding of tugboat tail shaft, and cross welding of four parts. The president proceeded to describe the beneficiary's duties as follows:

> [The beneficiary] provides services to various shipyards in the United States, including supervising and coordinating the activities of workers engaged in welding and cutting of products and structures. He applies this knowledge of welding and cutting techniques, as well as the use of the proper materials, equipment, and fabrication requirements. Also, based on our revolutionary techniques, he analyzes the work orders and blueprints of local shipyards in order to determine the need for supplies and sequence of operations required. He is therefore involved in the requisition of supplies, such as weld rods, gas, flux, and fixtures. He also trains local workers in the operation of equipment so that the jobs are performed by local individuals rather than less efficient machines. He supervises the fitting and assembly of structural frames, and also supervises workers in electric-weld jobs, such as marking tubing from flat steel strips by electric-weld.
>
> All of these jobs that he performs stem from the specialized knowledge techniques developed by our parent company. Workers trained in the U.S. shipyards simply do not have access to these types of production techniques, and therefore our consulting services are in high demand.

The letter explained that "[the beneficiary's] specialized training from our parent company, is similar to the other employees that work for our company," and indicated that "the beneficiary's training does not differ from our other employees, who are also present in the United States under L1B status."

In addition, the foreign entity submitted a support letter from a manager informing United States Citizenship and Immigration Service (USCIS) that the foreign entity, and its affiliates, made up the "largest shipbuilding company in the world." The letter went on to state the following with respect to the beneficiary's qualifications:

> [The foreign entity] is sending our top shipbuilders to the United States to work for our subsidiary company. Of our 50,000 employees, the workers that are being sent under the L visas are amongst the top 5% of our skilled workers. As the documents enclosed herein prove, they have gone through years of training in order to achieve their esteemed status[...]
>
> All of the workers that we commit to our U.S. subsidiary have the same background. We have been sending workers since 2008. The workers that we are sending this year are no less qualified than the ones that USCIS approved 4 years ago.

The letter explained that the petitioner has committed substantial time and resources on building the U.S. subsidiary and that it has contracts with numerous U.S. shipyards that would be severely hampered by the denial of this and other L-1B petitions.

The foreign entity submitted a second letter providing further explanation of the beneficiary's training and experience. The letter again indicated that the beneficiary has worked for the foreign entity since 1995, and since 2006, as a welding supervisor. The foreign entity described the beneficiary's former duties abroad as follows:

- Provide technical guidance to lower level field engineering personnel.
- Perform and/or manage verification activities (inspection and documentation) of welds, materials, and overall workmanship in accordance with specifications/code requirements.
- Revise internal welding and materials specifications to reflect lessons learned and industry standard updates.
- Supervise and train employees to improve quality and quantity of work.
- Diagnose faults or malfunctions and report causes and solutions.

The foreign entity further asserted that the beneficiary received various welding licensures and certifications, including a high level skilled welder and welder qualification certificates from the China Classification Society, both of which require the welder to "pass several tests and evaluations though the certified institute." The foreign entity noted that the beneficiary attended "the [redacted] from 11/20/07

to 09/26/2008," and it described as a "private course provided by [the foreign entity] to train their first-line supervisors."

The foreign entity explained that the beneficiary's expertise is derived from sixteen years of employment with the company and noted that the beneficiary was afforded advanced level training provided to only 5% of its more than 50,000 workers. The foreign entity asserted that its shipbuilding techniques "far outshine any other shipyard in the world," explaining that its welders perform vertical and horizontal welding by hand thereby making fewer mistakes than a machine. The foreign entity stated that its welders teach local welders in the United States these techniques, including using mirrors to see and work on corners, welding of the tugboat tail shaft, and cross welding of four parts, at which the beneficiary has excelled. The foreign entity indicated that it has "developed high-end welding equipment and special performance welding material." The foreign entity asserted that "only welders who have successfully completed multiple levels of training at the [foreign entity] are knowledgeable in these techniques," and that "such training is not available at any other shipyard in the world."

Lastly, the petitioner provided payroll documentation from 2012 reflecting that the beneficiary is one of sixteen welders, as of the most recent payroll documents from March 2012, assigned to the client the payroll showed at least fourteen other welders employed by the petitioner and assigned to other clients.

In revoking the approval of the petition, the director pointed to the large number of other welders employed by the company who have completed the beneficiary's level of training, the lack of explanation as to the significance of the beneficiary's stated certifications and licenses, and a lack of supporting evidence relevant to the company's asserted technological advancements.

On appeal, counsel contends that the petitioner has provided "a multitude of evidence" that the beneficiary possesses an advanced level of expertise in the company's processes and procedures, including a detailed description of the history of the beneficiary's training and advancements, documentation of the beneficiary's certificates of achievement, and detailed discussion as to how the petitioner's employees possess knowledge which is impossible for individuals outside the company to obtain.

B. Analysis

Following a review of the totality of the evidence submitted, the petitioner has not established that the beneficiary possesses 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 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. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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.

In order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). 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.

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. 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present matter, the petitioner has provided insufficient explanation and supporting evidence relevant to its processes and technologies to establish that the knowledge held by the beneficiary is specialized or advanced. The petitioner states a number of times on the record that its welding processes are unique, advanced, "the best in the world" or "revolutionary." The petitioner indicates that its welding techniques are not available through any other source in the world. However, the petitioner provides only cursory discussion of these innovations and provides no supporting documentation, other than its own statements, to support these assertions. For instance, the petitioner provides a listing of welding techniques it employs, but fails to discuss how these methods differ from others used in the industry or provide documentary evidence to demonstrate that these techniques are exclusive to the foreign entity and its affiliates as claimed. 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)). Again, 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.

Further, the petitioner has not provided evidence that compares the beneficiary with similarly employed workers within or outside the company as necessary to demonstrate that his knowledge is special or advanced. The beneficiary's knowledge must be distinguished as different from knowledge that is commonly held by other welders in the industry or advanced in comparison to other similarly-employed workers in the petitioner's organization. Merely stating that the beneficiary holds proprietary knowledge or establishing that it is technically complex is not sufficient. The petitioner must demonstrate that this knowledge is noteworthy or uncommon within the company's organization or within the industry, when compared to similarly placed colleagues. Here, the petitioner has submitted little evidence to establish that the beneficiary's knowledge is advanced or special as compared to other welders in the shipbuilding field.

The petitioner submitted payroll documentation reflecting over thirty other welders working for the petitioner, but fails to provide any comparison of the beneficiary against his colleagues to set him apart from these similarly placed workers. The petitioner states that the foreign entity employees over 50,000 "skilled workers," out of which, only approximately 5% reach the advanced level reached by the beneficiary. First, this statement reveals that thousands of others in the company's organization hold a similar level of knowledge as the beneficiary. The petitioner stated directly that all of the welders sent to the United States receive similar training consistent with all of its first-line supervisors and that they have comparable skill levels, again suggesting that the beneficiary's level of knowledge is not distinguished or uncommon when compared to his colleagues. Further, as discussed, the petitioner has not provided any supporting evidence to substantiate that the foreign entity has exclusive control of its claimed proprietary welding techniques. As such, the petitioner has not demonstrated that the beneficiary's knowledge is special or advanced when compared to similarly placed workers outside of the organization. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Furthermore, the petitioner has submitted insufficient specifics and documentary evidence relevant to the beneficiary's training and experience to establish that he holds specialized knowledge. The petitioner provides no specific projects on which the beneficiary worked nor has it described innovations he introduced or revisions to the welding manual that he made, as referenced in his duty description. In addition, the petitioner indicates that the beneficiary has two Chinese welding licenses, but fails to indicate why the acquisition of these licenses sets him apart from his colleagues both within and outside the organization. The petitioner states that the beneficiary completed advanced training completed by only 5% of its skilled workers, but fails to document the existence of this program or the beneficiary's completion thereof, despite the direct request of the director. Notably, the petitioner stated in its letter submitted in response to the NOIR that every employee has a detailed and documented training plan. The petitioner also did not articulate how long it would take another employee to reach the beneficiary's level of knowledge. 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). In sum, the petitioner has not sufficiently described the beneficiary's training and experience and how it sets him apart from his colleagues both within and outside the organization.

The petitioner submits an expert opinion from an engineering professor at the asserting that the beneficiary's sixteen years of experience are the equivalent of his completion of a

Bachelor's level training in mechanical engineering. However, the attainment of the equivalent of a Bachelor's level degree does not alone establish that a beneficiary holds specialized knowledge. The petitioner has not indicated that the attainment of the equivalent of such degree sets the beneficiary apart from his colleagues in the industry. Further, the engineering professor stated that his conclusions were based upon "original documents" provided by the beneficiary, few of which are submitted on the current record. Therefore, the expert opinion offers little probative value in demonstrating the beneficiary's specialized knowledge and fails to overcome the evidentiary shortcomings discussed above.

In sum, the petitioner has failed to demonstrate that the beneficiary's training, work experience or knowledge of the company's processes is advanced in comparison to that possessed by others employed by the petitioner, or that the welding processes used by the petitioner are substantially different from those used by other shipbuilding companies, such that knowledge of such processes alone constitutes specialized knowledge.

Again, 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 he 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.

III. L-1 VISA REFORM ACT

The next issue to be addressed is whether the beneficiary's primary placement at client worksites is in compliance with the requirements of the L-1 Visa Reform Act, as specified in section 204(c)(2) of the Act, 8 U.S.C. § 1184(c)(2).

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

> (F) 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 of the petitioning employer is necessary.

A. Facts

The Form I-129 solicits information specifically related to the proscriptions created by the L-1 Visa Reform Act. On the Form I-129 Supplement L, at Section 1 Question 13, the form asks if the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer. If the petitioner answers this question in the affirmative, the form then solicits information regarding: 1) how and by whom the beneficiary will be controlled and supervised; and 2) the reasons why placement at another worksite is necessary, including a description of how the beneficiary's duties relate to the need for his or her specialized knowledge.

The petitioner answered "yes," indicating the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer, and answered each question as follows:

> The beneficiary will be supervised solely by the President of [the petitioner], Mr. [redacted] and the executive committee of [the foreign entity] in China. . . .
>
> The beneficiary will spend time at numerous shipyards across the United States providing consulting services in [the foreign entity's] techniques. . . .

The petitioner did not provide any additional information relating to the beneficiary's placement at an offsite location.

In the NOIR, the director instructed the petitioner to submit a copy of the contract for services between the petitioner and the employer where the beneficiary will be primarily stationed. The director specifically instructed the petitioner that if the contract does not contain information specific to the terms and conditions of the beneficiary's employment, the petitioner should submit an addendum establishing who retains the authority to hire and fire the beneficiary, who is responsible for administering the beneficiary's time and pay, and to what degree the beneficiary will be controlled and supervised by the offsite employer, rather than the petitioner.

In response, the petitioner stated that the foreign entity holds advanced welding techniques that the beneficiary "teaches to various shipyards in the United States." The petitioner did not specify the location of the beneficiary's current assignment. However, various invoices provided from March 2012 indicate that the beneficiary worked regularly on the [redacted] job," while submitted payroll documentation reflects that the beneficiary was paid for this work by the petitioner.

The petitioner provided two contracts with clients, one with [redacted] dated February 7, 2011 for the petitioner's provision of "Chinese welding supervisor with specialized knowledge on various projects." Article 7 of this agreement indicated that the petitioner retained responsibility for paying the beneficiary,

retained the right to hire, fire, discipline and reassign its employees, and retained right over the direction and control over workers compensation claims.

The petitioner further submitted a Master Service Agreement with dated April 26, 2012 for the petitioner's provision of "fully trained personnel capable of diligently and efficiently operating same and/or otherwise performing services for the Company." The agreement stated in Article 2.1 that the petitioner would perform services "in strict conformity with the specifications and requirements contained herein and such Work Orders." Article 2.3 declared that the petitioner "shall assign to each site where Work is being performed a superintendent, satisfactory to [the client], who shall be authorized to act on behalf of the Contractor in all matters related to the execution of the Work," but noted that "Contractor shall not remove or replace such a superintendent without prior written notice to and approval or direction from the Company." Article 2.5 indicated that "Contractor shall be solely responsible for the Work under this Agreement and the Work order," and other sections of the agreement reflected that the petitioner warranted the engineering and design of the work provided. Further, Article 2.12 reflected that the petitioner retained control over the termination, discharge, and discipline of its employees and was responsible for all payroll and taxes related thereto.

In revoking approval of the petition, the director stated that the submitted contracts reflected that the petitioner was providing labor for hire, rather than providing goods or services to the petitioner's clients that require specialized knowledge specific to the petitioner's organization. The director noted that the services provided were technical support and enhancement of each client's shipbuilding processes and technologies and stated that the evidence suggested that the beneficiary's claimed specialized knowledge was only tangentially related to the performance of these services.

On appeal, counsel states that the petitioner has submitted a contract with the client operating the worksite where the petitioner is stationed and that this contract clearly states that the petitioner has complete control and supervision over the beneficiary. Counsel contends that the director failed to consider this evidence.

B. Analysis

Upon review, the petitioner has not established that the placement of the beneficiary at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the Act.

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. 533, 534 (BIA 1988).

Here, the petitioner has not submitted sufficient evidence to establish that the beneficiary is primarily under the supervision and control of the petitioner. On appeal, counsel states that the petitioner has submitted a contract from a client confirming that the petitioner retains complete control over supervising the beneficiary. However, the evidence submitted reflects that the beneficiary is assigned to the client , and the petitioner has not submitted any documentation relevant to this client. Further, the petitioner has not specifically described the beneficiary's engagement with this client, explained by whom he is supervised, or otherwise clarified the beneficiary's circumstances at the client location. In addition, invoices submitted on the record indicate that seventeen other welders are engaged at the site, suggesting that these employees are likely engaged as labor for hire and not for the provision of specific goods or services relevant to their specialized knowledge.

Further, the petitioner has provided insufficient evidence to establish that it is providing professional services to its clients that require the application of specialized knowledge. The director concluded that the beneficiary's placement at the worksite of the unaffiliated employer appears to be essentially an arrangement to provide labor for hire. Based on the description of the beneficiary's duties and the lack of evidence that the petitioner provided regarding the beneficiary's services in connection with the provision of a product or service directly related to the beneficiary's claimed specialized knowledge, we agree with the director's finding that it appears the beneficiary will be supplementing the client's pre-existing shipbuilding processes and methodologies.

The petitioner has not described the specific duties performed by the beneficiary at the client location or submitted statements of work, work orders, emails, or other such documentation to corroborate its claims that the petitioner will provide specialized services, rather than simply providing welding services as instructed by the client. 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 evidence submitted fails to establish that the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act. Accordingly, the appeal will be dismissed.

III. BENEFICIARY'S FOREIGN EMPLOYMENT

The next issued to be addressed is whether the petitioner has established that the beneficiary was employed abroad for one continuous year in the three-year period preceding his admission to the United States as an L-1B nonimmigrant.

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

1. Facts

In the Form I-129 the petitioner stated the following when asked to describe the beneficiary's duties in the three years preceding his admission to the United States:

- Supervise workers engaged in working on high-pressure systems
- Train new workers in use of equipment and tools
- Perform duties as described under SUPERVISOR Master Title
- Inspect completed processing systems to determine conformance with specifications
- Develop new or modify current welding methods, techniques and procedures
- Do new layouts, fabrications, assemble and installation works

The petitioner submitted an expert opinion evaluation of the beneficiary's work experience from a [redacted] professor who stated that the beneficiary was employed by the foreign entity as a welder from 1996 until 2003, and as a welding supervisor beginning in December 2006 after a three-month absence. The letter was dated October 1, 2010.

As previously discussed, the director issued a notice of intent to revoke the approval of the petition following a site visit by a Fraud Investigation Unit from DOS' [redacted] to the foreign entity's location in China. The NOIR stated that the Fraud Prevention Unit spoke with the petitioner's human resources department and that it was "unable to confirm a number of applicants ever worked for the parent organization or any other foreign corporate affiliates." The Fraud Prevention Unit noted that several of the employees of the petitioner gave conflicting statements regarding their work histories. This information was passed to the DOS' [redacted] who in turn provided this derogatory information to USCIS. As a result, the director requested that the petitioner submit payroll documentation to substantiate that the beneficiary was employed with the foreign entity for one of the three years prior to the filing of the petition, including documentation from the foreign employer on company letter head and government tax documents identifying the foreign entity as the beneficiary's employer.

In response, the petitioner provided a letter from the foreign entity refuting the DOS findings, indicating that its manager of human resources had met with representatives of DOS and verified that a series of employees were indeed included in their records and that these employees were "group leaders." In addition, the petitioner submitted another support letter from the foreign entity further describing the beneficiary's experience and his attainment of specialized knowledge, as previously discussed herein.

The petitioner provided a translated salary report for the beneficiary from 2009 indicating that he had received regular wages during this entire year ranging from 3,000 Yuan to 4,576 Yuan per month. The petitioner also provided company-issued training certificates for training the beneficiary completed in 2008.

In revoking the approval of the petition, the director stated that the petitioner did not establish that the beneficiary had been employed with the foreign entity for the required one year. The director pointed to the

fact that the petitioner submitted payroll documentation from only one year, despite the fraud concerns noted in the NOID and the beneficiary's claimed sixteen years of employment with the foreign entity.

On appeal, counsel submits additional evidence endeavoring to establish that the beneficiary was employed for the qualifying one year period with the foreign entity, including documentation from the social insurance management center (or as asserted by counsel, "the social security department of the Chinese government"). A submitted "social insurance fund employee pay insurance situation list" indicates that the beneficiary had a monthly "social insurance base" of 4,300 Yuan throughout 2010. Further, the petitioner provides a 2010 salary report relevant to the beneficiary showing that he earned similar monthly wages throughout this year as those reflected in his 2009 salary report.

2. Analysis

Upon review of the record, the petitioner has established that the foreign entity employed the beneficiary for at least one continuous year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The petitioner has provided competent English translations of payroll documentation confirming the beneficiary's employment with the foreign entity for all of 2009 and 2010, 2010 tax documentation also suggesting that the beneficiary was employed with the foreign entity during this entire year, and training certificates issued to the beneficiary in 2008. Although the petitioner has not established that the beneficiary's employment was in a specialized knowledge capacity, the petitioner has demonstrated with a preponderance of the evidence that the beneficiary was employed for the minimally required one year abroad. *See* 8 C.F.R. § 214.2(l)(3)(iii). As such, the director's decision to the contrary, with respect to the beneficiary's minimum of one year employment abroad, is hereby withdrawn.

IV. CONCLUSION

The appeal will be dismissed for the other stated reasons set forth above, with each considered as an independent and alternate 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.

ORDER: The appeal is dismissed.