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APR 28 2009

FILE: EAC 08 099 52542 Office: VERMONT SERVICE CENTER Date:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is an information technology solutions and services provider. It seeks to temporarily employ the beneficiary in the United States as a programmer analyst, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The petitioner claims to be a branch of [REDACTED], located in Bangalore, India. The director denied the petition, finding that the petitioner had not established that the beneficiary possesses specialized knowledge or that the proffered position requires specialized knowledge.

On appeal, counsel for the petitioner asserts that the director's decision was based on conjecture that the beneficiary's responsibilities are merely entry-level and thus not specialized. In support of these assertions counsel submits a brief and additional evidence.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

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

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.

As stated above, the petitioner seeks to employ the beneficiary temporarily in the United States as a programmer analyst. In a letter of support dated February 13, 2008, the petitioner stated that the beneficiary was a lead identity and access management consultant at the foreign entity for more than one year. Specifically, the petitioner stated:

In India, where he was a Senior Systems Engineer, [the beneficiary] has managed the consulting, product development, testing, design, and successfully implementing Identity and Access Management Solutions. We expect him to do the same thing here in the United States. He has the unique responsibility of designing, developing, architecting and implementing Identity Management/Provisioning solutions at enterprise level whether single sign-on or identity and access management solutions.

Product Management

He also has responsibility for ensuring that product development meets the requirements of [the petitioner's] selling partners. Because of his unique role, he is charged with developing and conducting presentations and product trainings to customers and partners on [the petitioner's] products. He is responsible for technical and domain consulting in identity and access management, partner management, and product management. He also works with the presales & technical team in developing presentations, product-training materials for conducting presentations.

He has performed these duties and will continue to perform same duties including those below

- Carry out multi-threading programming and object-oriented design. Design and implemented string matching algorithm and connection between the database and string matching process for cleansing the data.
- Access system architectures and limitations, define and design system specifications, input/output process, and working parameters in co-ordination with Architecture team.
- Develop system requirements and provide input info defining and designing system solutions for enterprise equipment.
- Provide reviews, validation, and enforcement of enterprise policies.

Responsible for configuration control boards to review systems engineering, software development, and sensor integration and test procedures to support the client's technical needs.

- Complete documentation for quality, standard operating procedures, standards, disaster recovery, work instructions and proposals.
- Develop data-centric network designs focused on intra-building connectivity.
- Research and plan for security technology solutions such as encryption, access controls, fail-over and fault-tolerant environments, wireless, hand-held devices, security controls in new technologies.

Regarding the specialized knowledge of the beneficiary's proposed position, the petitioner stated:

[The beneficiary's] position involves specialized knowledge of [the petitioner's] products and processes and services including Identity and Access Management Solutions. He has specialized knowledge in [the petitioner's] product-line Specialized knowledge of [the petitioner's] product line is required to [tailor the petitioner's] sophisticated and complex product line within an intricate and dynamic marketplace. Knowledge of and expertise in each product, and its appropriate implementation and essence of its customization to a particular market need is essential. [The beneficiary] is very adept in [the petitioner's] implementation standards, development procedures, architecting and processes.

Finally, the petitioner provided an overview of the beneficiary's qualifications, and stated:

[The beneficiary] graduated [with a] Bachelor's degree (B.Tech) in Information and Communication Technology from Dhirubhai Ambani Institute of Information and Communication Technology Gandhinagar Gujarat, India. In addition, he holds many industry relevant certifications including IBM Tivoli Identity Manager Deployment Professional 4.6 from leading technology vendors like IBM. He has been with [the petitioner] since October 2006, during which time he has undertaken dynamic and innovative consulting career that reflects pioneering experience in security infrastructure concepts across operating systems, multi-tiered architectures access management solutions, user provisioning solutions and enterprise directory solutions. [The beneficiary] has in depth expertise and experience of [the petitioner's] products and processes.

The petitioner also submitted copies of various organizational charts for the petitioner and the foreign entity, which provided an overview of the staffing structure of the two entities and the beneficiary's role therein.

The director found this evidence insufficient to establish the beneficiary's eligibility, and issued a request for additional evidence on March 3, 2008. Specifically, the director requested information establishing the beneficiary's specialized knowledge, and requested evidence such as a description of a typical work week for the beneficiary, the manner in which he gained his specialized knowledge such as the amount of classroom or on-the-job training he received and the minimum amount of time required to train a person in the proposed position. Additionally, the director requested evidence demonstrating that the beneficiary's position in the United States required specialized knowledge, as well as evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished, and not generally known by practitioners in the field or that his advanced knowledge of the company's processes and procedures is apart from the basic knowledge possessed by others. Finally, the director asked for clarification regarding whether the physical location of the beneficiary's proposed position was offsite from the petitioner's place of business.

Counsel for the petitioner submitted a letter from the petitioner addressing these requests in a response dated April 10, 2008. First, the petitioner addressed the question of whether the beneficiary would work offsite, and claimed that it had clearly stated at item 13 of Form I-129 that the beneficiary would *not* be stationed offsite in the United States. The AAO, however, notes that contrary to the petitioner's claim, the petitioner clearly answered item 13 in the affirmative. Nevertheless, this discrepancy has been resolved and is not pertinent to the question of specialized knowledge.

The petitioner addressed the issue of specialized knowledge by first referring to a March 9, 1994 Guidance memorandum from ██████████ Acting Executive Associate Commissioner, recently reaffirmed by a memorandum from ██████████ Associate Commissioner for Service Center Operations dated December 20, 2002, and claims that the language contained in the

director's request was contrary to the points outlined in these memoranda.¹ Specifically, the petitioner asserts that the evidence submitted in support of the beneficiary's qualifications is sufficient to satisfy the regulatory requirements as explained in further detail by the memoranda.

Regarding the beneficiary's qualifications, the petitioner stated:

Our products, methods and standards for performing work do differ significantly from the products and methods generally used in the industry.

* * *

Our IT professionals are very well versed in our design and architecture of identity management. Our partnerships with and understanding of the premier products in this vertical industry is crucial to the success of ours and our clients' businesses. Our ability to implement successful programs helps companies increase efficiency, productivity and profitability by identifying trends and delivering solutions contained within their reservoir of data. This technology delivers diverse business security and intelligence applications that companies need to manage the full range of corporate performance. It allows multiple users storing and accessing the information repository simultaneously with the most updated and accurate information. The interoperability of this integrative technology is not limited to one industry. Our integrated system has been designed to suit the needs of multiple industries and businesses. These technologies, designed and developed by [the petitioner], are so powerful and diversified in their data and reporting capabilities, that many users from different locations can use them simultaneously. Accuracy, timely data, easy access, virtual location capabilities and, above all, the security of the information that is accessed makes these tools and technologies of [the petitioner] very valuable (and in high demand) to the present and emerging Information Portal Technology industry.

* * *

[The beneficiary] is a highly qualified and trained professional in the area of Identity & Access Management. He was specially trained in [the petitioner's] product-line, required to market and [tailor the petitioner's] sophisticated and complex product line within an intricate and dynamic marketplace, particularly [the petitioner's] implementation standards, development procedures, architecting and processes. He has been a key employee in developing and implementing complex projects in User Provisioning, Single Sign-ON and Federation for both our national and international

¹ See Memo. from [REDACTED], Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*).

clients. There are very few professionals in this domain. Identity and Access Management is a very specialized domain, once an organization turns on Identity Management, it certainly reaps its benefits in terms of security audit and ease of use. However, a solution designed improperly can open up fatal fissure in the security blanket. At [the petitioner], [the beneficiary] has been extensively trained at [the petitioner's] Identity Manager Reporting Solution, IAM Consulting, [the petitioner's] Compliance Manager for TIM: [the petitioner's] Compliance Manager for Tivoli Identity Manager ("ICMI") which enables easy control and managing of the company's compliance objectives by providing robust information dissemination capability; [the petitioner's] Reporting Solution for MIIS; [the petitioner's] SA Reports for SOX Compliance; [the petitioner's] ESM Reporting Tool for Symantec ESM (Enterprise Security Manager) Report Generator developed to enhance the reporting capabilities of ESM, etc. Knowledge of each product; how each product functions; its appropriate implementation and how the product can or cannot be tailored to a particular client are all part of the technology arsenal of [the beneficiary].

* * *

It is important to understand that the beneficiary's knowledge is different from the rest of the market because this knowledge is proprietary to our company. [The beneficiary] has been helping our company define and fine tune this technology and, at the same time, exploit its full potential. He has been part of the development and implementation of same as a remote resource because of his uncommon expertise and proficiency in identity and access management, security and reporting. He also played a key role in the design and implementation of some of the processes. His pioneering effort and excellence with these technologies has earned us valuable and durable clientele and immense goodwill. His prototype development efforts have further elevated the standing of [the petitioner] in the IT industry. In this process, beneficiary and his team members became intimately knowledgeable in every aspect of these unique software technologies. The beneficiary and his team are the only professionals with detailed information on these extraordinary technologies which are the direct result of [the petitioner's] procedures and processes. [The beneficiary] has used these technologies to customize applications for Information Resources, Inc., Medica Health Plans, Pekin Insurance, in the United States Sargento Foods, to name a few. His assignments spread across Retail, Telecom, Health Care, BFSI & Technology verticals. The knowledge and expertise regarding the far complicated world of security, audit and compliance understanding makes him one of [the] most valuable professional resource[s] at [the petitioner].

Finally, the petitioner stated that typical trainees in the identity and access management technologies have two or more years of industry experience before being accepted into the program and are required to have a good understanding of identity management, business functionalities and software experience on various database platforms. Once accepted, trainees

undergo six months of intensive training and lab activities. At the conclusion of the training period, trainees are assigned to a project.

On April 22, 2008, the director denied the petition. Specifically, the director concluded that the position of programmer analyst was a common position available in similar IT firms, and that the petitioner's in-house training seems standard. Moreover, the director found that although the petitioner claimed that its practices and software provided a "competitive edge for the petitioner," there was insufficient evidence to demonstrate that these practices and software were proprietary, owned by the petitioner, or significantly different than others available in the industry.

On appeal, the petitioner claimed that its documentation submitted in support of the petition established the beneficiary's specialized knowledge and likewise demonstrated that the petitioner's practices and software were proprietary in nature. The petitioner submits copies of its company overview and product descriptions taken from its website in support of the appeal.

Upon review, the AAO concurs with the director's decision.

As enacted by the Immigration Act of 1990, 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.

Looking to the plain language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. Although *1756, Inc. v. Attorney General* was decided prior to enactment of the Immigration Act of 1990, the court's discussion of the ambiguity in the former INS definition is equally illuminating when applied to the definition created by Congress:

This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf. Westen, The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

745 F.Supp. 9, 14-15 (D.D.C., 1990).

In effect, Congress has charged the agency with making a comparison based on a relative idea that has no plain meaning. To determine what is special, USCIS must first determine the baseline of ordinary.

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the canons of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, it is instructive to look at the common dictionary definitions of the terms "special" and "advanced." According to Webster's New World College Dictionary, the word "special" is commonly found to mean "of a kind different from others; distinctive, peculiar, or unique." *Webster's New World College Dictionary*, 1376 (4th Ed. 2008). The dictionary defines the word "advanced" as "ahead or beyond others in progress, complexity, etc." *Id.* at 20.

Second, looking at the term's placement within the text of section 101(a)(15)(L), the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO would expect a specialized knowledge employee to be an elevated class of workers within a company and not an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. 9, 14 (D.D.C., 1990).

Third, the legislative history indicates that the original drafters intended the class of aliens eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* This legislative history has been widely viewed as supporting a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *American Auto. Ass'n v. Attorney General*, Not Reported in F.Supp., 1991 WL 222420 (D.D.C. 1991); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

Although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge," the definition did not expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL

200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to extend the "proprietary knowledge" and "United States labor market" references that had existed in the existing agency definition, there is no indication that Congress intended to liberalize the L-1B visa classification.

If any conclusion can be drawn from the ultimate statutory definition of specialized knowledge and the changes made to the legacy INS regulatory definition, the point would be based on the nature of the Congressional clarification itself. Prior to the 1990 Act, legacy INS pursued a bright-line test of specialized knowledge by including a "proprietary knowledge" element in the regulatory definition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). By deleting this element in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave legacy INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir.1988)).

Accordingly, as a baseline, the terms "special" or "advanced" must mean more than simply skilled or experienced. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). Specialized knowledge requires more than a short period of experience, otherwise "special" or "advanced" knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized.

Considering the definition of specialized knowledge, it is the petitioner's fundamental burden to articulate and prove that an alien possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). 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.

After articulating 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. 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. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's industry.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, the petitioner fails to establish that the beneficiary's proposed position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

In the present matter, the petitioner has provided a generic description of the beneficiary's intended employment with the U.S. entity. Moreover, the petitioner failed to specifically articulate the duties of the beneficiary, and merely claimed that he has specialized knowledge in the petitioner's product line and that he is "very adept in [the petitioner's] implementation standards, development procedures, architecting and processes." The petitioner, however, has not sufficiently documented the actual nature of the beneficiary's proposed job duties, nor has it clarified how the performance of said duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary is instilled with special and advanced knowledge of the petitioner's practices and software, yet fails to provide any specific evidence to support these assertions.

For example, the petitioner describes in detail both on appeal and prior to adjudication the various types of software and practices it uses in connection with its services. The petitioner also provided a brief overview of the training it provides, stating that new trainees receive a six-month intensive training course including lab activities. However, the petitioner has made no correlation between the training and expertise of the beneficiary in relation to its products, nor has it made a claim that the beneficiary actually was trained by the petitioner in this manner. The petitioner merely states that "eligible trainees" in general, and not specifically the beneficiary, participate in this six-month training course. This is particularly relevant since the petitioner claims that all "eligible trainees" have, on average, a minimum of two years experience in the industry, and cites no specific qualifications or training necessary to be hired by the petitioner. This lack of specificity, therefore, creates a presumption that any programmer analyst could perform the duties of the beneficiary in a mere six months after completing the petitioner's "intensive training."

Moreover, while the petitioner acknowledges the training it provides, it does not articulate with specificity the nature of the training; namely, in what particular software or systems the beneficiary received instruction and whether the beneficiary's instruction differs from any other person deemed an "eligible trainee." In fact, the petitioner repeatedly refers to the beneficiary's assistance in refining "this technology" and his familiarity in "these unique software technologies," yet fails to specifically identify the name and/or nature of these products. Finally, the record indicates that the beneficiary earned his bachelor's degree in Information and Communication Technology in 2005, and began working for the petitioner in October 2006. Therefore, it does not appear that the beneficiary possesses the minimum two years of experience in the industry which the petitioner claims is required for its "eligible trainees," since the record contains no resume for the beneficiary and he was still in school in 2005. Therefore, at best, the AAO can feasibly conclude that the

beneficiary has received the same basic training as other “eligible trainees.” Merely concluding that the beneficiary is an expert in the petitioner’s “proprietary” technologies, without identifying the nature of the beneficiary’s knowledge or providing documentation to support the claimed proprietary nature of the petitioner’s products will not establish eligibility in this matter. 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, another issue identified by the AAO but not raised by the director is the actual length of employment the beneficiary had abroad. The record indicates that the beneficiary joined the foreign company on October 16, 2006. However, USCIS records indicate that the beneficiary entered the United States on August 20, 2007; therefore, the beneficiary only had ten months of employment abroad with the foreign entity.² Therefore, if the beneficiary completed the petitioner’s intensive six-month training course when he first joined the company, i.e., from October 2006 to April 2007, that means that the beneficiary had a mere four months of hands-on experience with the petitioner’s projects and processes prior to his departure in August 2007. This issue, therefore, raises further questions with regard to the depth and intensity of the beneficiary’s training and experience in relation to his colleagues and other similarly trained programmers in the industry. 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).

The AAO notes that, on appeal, a total of seven training certificates were submitted in support of the beneficiary’s qualifications. Specifically, these certificates, issued to the beneficiary by the petitioner between December 2006 and August 2007, indicate that the beneficiary has successfully completed various training courses. This evidence is not acceptable for two reasons.

First, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this matter, the director specifically requested evidence of

² The regulation at 8 C.F.R. § 214.2(l)(3)(iii) provides that the beneficiary must have at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A), periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement.

the petitioner's training process, including how long it takes to train an employee and in what specific manner this training is conducted.

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

Second, even if the training certificates were afforded evidentiary value on appeal, they fail to describe or outline the specifics of the training provided. For example, the certificates do not indicate how many classroom hours were required, the intensiveness of the training process, or how many other employees received this same training. Based on these documents alone, the AAO would be unable to determine the level of the beneficiary's training or expertise in any of the identified processes.

As stated above, it is the petitioner's fundamental burden to articulate and prove that an alien possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). 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.

No discussion of how the beneficiary learned the skills necessary to customize applications for clients or modify the petitioner's technology, or the manner in which his skills are substantially different from other programmer analysts of the petitioner, is submitted. Essentially, the petition is based on the petitioner's claim that the beneficiary possesses specialized knowledge not normally possessed by the petitioner's other employees or programmer analysts. However, the petitioner does not distinguish the beneficiary's training from any other "eligible trainee," and more importantly does not discuss the extent of the beneficiary's training at all. Specifically, counsel for the petitioner claims on appeal that "it is important to understand that the beneficiary's knowledge is different from the rest of the market because this knowledge is proprietary to our company and he is one of only a few who have this knowledge." This statement is simply insufficient to overcome the well-reasoned conclusions cited by the director as a basis for the denial. 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).

In this matter, the petitioner has omitted any discussion of the nature of the beneficiary's knowledge. For example, what truly distinguishes the beneficiary's skills from other programmer analysts or colleagues? The petitioner focuses on identity and access management as a means to thwart identity theft; however, the AAO does not accept that the petitioner is the only company in the industry implementing such solutions. Does the beneficiary work solely in one area or on one software application that is not widely known or commonly used by other analysts in the petitioning entity or in the industry itself? If so, what type of training is required to work with such software or processes? The petitioner provides no details regarding any aspects of the petitioner's business which would distinguish the petitioner's processes as uncommon or distinctive and thus lead to a conclusion that the beneficiary's knowledge was likewise uncommon or distinctive.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge in the IT industry is more special or advanced than the knowledge possessed by others employed by the petitioner, or in the industry as a whole. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job in the foreign entity. However, the successful completion of one's job duties does not establish possession of specialized knowledge or establish employment that requires specialized knowledge.

While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. The petitioner failed to provide additional evidence to support this proposition, and the AAO notes that the appeal brief submitted by counsel is virtually identical to the response submitted by the petitioner to the request for evidence, and contains no new documentation or assertions. The petitioner's reliance on the 2002 Associate Commissioner's memorandum is again repeated; however, the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the regulation at 8 C.F.R. § 214.2(l)(3)(iii) provides that the beneficiary must have at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition. As previously

discussed, the beneficiary commenced employment with the foreign entity in October 16, 2006 and entered the United States in B-1 visitor status on August 20, 2007. Therefore, the beneficiary did not have one year of full time employment with the foreign entity at the time of the petition's filing. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.