



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 18 2013** Office: CALIFORNIA 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)

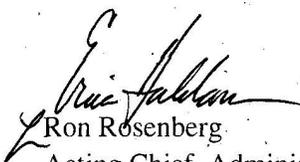
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intra-company 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 Michigan limited liability company, operates an automotive products business. The petitioner claims to be an affiliate of [REDACTED] located in Shanghai, China. The petitioner seeks to employ the beneficiary as a product design engineer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary has been employed abroad for one continuous year in a capacity that involves specialized knowledge as defined in INA § 214(c)(2)(B) and 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal counsel for the petitioner contends that the director failed to consider all of the evidence submitted in response to the RFE and asserts that the beneficiary's entire time with the foreign entity has involved him in a position that requires specialized knowledge. Counsel for the petitioner submits a brief and duplicate copies of the response to the director's request for additional 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 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.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the beneficiary has been employed abroad for one continuous year in a capacity that involves specialized knowledge.

A. Facts and Procedural History

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it operates an automotive products business with 17,950 current employees and a gross annual income of "\$3,600 million." The Form I-129 indicates that the beneficiary would be employed as a product design engineer at the U.S. company. On the Form I-129, the petitioner describes the beneficiary's duties abroad as follows:

From September 2010 through the present, [the beneficiary] has been employed with [the foreign entity] in Shanghai, P.R. China as a Design Engineer. In this position, he has been responsible for: Analyzing the A surface; drawing typical structure sections, as well as detailed structure design; Product structure validation; Analysis of the feasibility of the manufacture and technology and the compilation of correlative program files.

Prior to joining [the foreign entity], [the beneficiary] was a Structural Engineer with [redacted] in Shanghai, P.R. China. In this position, he was responsible for the development of new air condition [sic]. His responsibilities included: Structure design

for spare parts, Evaluation of spare parts, and consideration of lowering the cost of technology and optimizing the structure of the products; Planned and and [sic] designed experiments to test and improve product performance; Wrote standard documents to instruct the workers to assemble all parts efficiently; Analyzed and resolved problems from the working-line in time to improve the production process.

In support of the petition, the petitioner submitted a letter describing the beneficiary's employment abroad as follows:

Since September 2010, [the beneficiary] has worked with [the foreign entity] in Shanghai, P.R. China as a Design Engineer. In this position, he uses is [sic] specialized knowledge of our product development design processes in order to carry out product design activities. [The beneficiary] has been extensively involved in vehicle exterior trim design projects. Specifically, he has worked on three projects, [redacted] exterior trim project, [redacted] exterior trim project and [redacted] exterior trim project. As such, [the beneficiary] possesses extensive and specialized understanding of [the petitioner's] internally developed product development process. [The beneficiary] is involved in product development design activities including analyzing the A surface, drawing the typical structure section, detail structure design, product validation, analyzing the feasibility of manufacture and technology and the compilation of correlative program files.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence of the beneficiary's one continuous year of employment abroad in a position that involved specialized knowledge.

In response to the RFE, counsel for the petitioner explained the beneficiary's experience abroad as follows:

[The petitioner] employs over 19,500 employees in the United States and abroad. Providing job descriptions and comparing the work of other employees to [the beneficiary's] would be logistically impossible. . . .

Similarly, the RFE states "[y]our description does not compare and contrast the beneficiary's knowledge, education, training, and employment with others employed in the industry performing the same or similar type of work." Neither the regulations nor the aforementioned memoranda require that the petitioner undergo a survey of the U.S. labor market, and gathering this type of information would be particularly onerous. Private employers, specifically those in the automotive industry, do not disclose this type of information. Maintaining a competitive advantage is critical to the survival of the entity, and it is also not realistic to assume that an employer would have information on the work performed by its competitors' employees. . . .

The Service requests information on any patents resulting from the beneficiary's work, and information on published material about the beneficiary. Although [the beneficiary] has filed a patent that was developed while an employee of [the petitioner], the Service is clearly applying an incorrect adjudication standard. As a point of clarification, the beneficiary is not

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seeking classification as an O-1 nonimmigrant of extraordinary ability. While the regulations are clear in stating that patents and published materials are appropriate evidence for the O-1 visa category, there is no mention of these documents in reference to the L-1B category. . . .

* * *

Further, in the instant RFE the Service states "[S]ince the beneficiary has only been employed with the foreign entity since September 2010, and it takes the beneficiary at least one year to achieve the minimum knowledge and experience necessary to perform the required position responsibilities, it does not appear that the beneficiary would have been employed in a position of specialized knowledge for at least one year." Again the Service's argument misstates the law. To be eligible for the L-1 intracompany transferee, the beneficiary must be "an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity . . . in a capacity that is managerial, executive, or involves specialized knowledge." See 8 C.F.R. § 214.2(l)(1)(ii) (emphasis added). At no point does the regulation specify that the one year with the company be in a position of specialized knowledge; only that the employee be working in the U.S. in a capacity that involves specialized knowledge gained with the foreign employer. The foreign employer . . . has provided a personnel record confirming his hiring date was September 27, 2010.

* * *

[The beneficiary's] knowledge is narrowly held throughout the company and is presently unmatched in the U.S. petitioner's workforce, which does not have the ability or knowledge base to successfully transition this project back to China. [The beneficiary] is the only individual on the design team who has specialized knowledge of the entire scope of product development, supply chain resources in China, and manufacturing implementation, therefore he is the qualified individual available to take this position in the United States.

The petitioner also stated the following about the beneficiary's experience:

[The beneficiary] has over five years of experience as a design engineer in sheet metal and plastics and has been employed by [the petitioner] since September 2010. He currently serves as the process owner for this design project with [redacted] and is the knowledge transfer conduit to ensure successful implementation and design build at [the petitioner's] facilities in China. During the course of his employment with [the petitioner] he has gained in-depth knowledge about this yet-to-be released to market product. This knowledge is closely held and not generally available.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed abroad for one continuous year in a capacity that involves specialized knowledge. In denying the petition, the director found that the petitioner's claim that it would take another individual at least one year to acquire the same level of specialized knowledge as the beneficiary made the beneficiary ineligible for the classification sought as the beneficiary was only employed by the foreign entity for one year and 9 months.

The director observed that it would take the beneficiary one year to acquire the specialized knowledge and then one year of employment in a specialized knowledge capacity, which would have been three months after the date of filing of the petition.

On appeal, counsel for the petitioner asserts that the beneficiary's employment abroad need only involve specialized knowledge as defined in INA § 214(c)(2)(B) and 8 C.F.R. § 214.2(l)(1)(ii)(D). Counsel contends that the regulation does not require that the beneficiary's one continuous year of employment abroad be in a position of specialized knowledge, but merely a position that involves specialized knowledge gained with the foreign employer.

B. Analysis

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary's employment abroad involved specialized knowledge.

In examining the specialized knowledge 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 performed sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary's position involved "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

In the present case, the petitioner claims that the beneficiary's position abroad involved specialized knowledge. The petitioner indicated that the beneficiary has been employed at the foreign entity for 21 months and has worked on three different client projects: [REDACTED] exterior trim project," [REDACTED] exterior trim project," and the [REDACTED] exterior trim project." However, the petitioner has not provided any clear descriptions of the beneficiary's role in each project and what each of the projects entailed in order to establish that the beneficiary's position abroad involved any specialized knowledge. Additionally, the director advised the petitioner that the design engineer position description and information provided by the petitioner in reference to the beneficiary's position abroad lacked any clear indication that the beneficiary's position abroad involved specialized knowledge. As such, the director requested that the petitioner submit a more detailed description of the beneficiary's duties and explain how his duties involve specialized knowledge. In response, the petitioner failed to elaborate on the beneficiary's previous project assignments, and how the beneficiary's position abroad involved specialized knowledge. Instead, the petitioner simply referenced the [REDACTED] project and stated that the beneficiary "developed a patent for the rear bumper." The petitioner did not provide any documentary evidence or further explanation about any of the projects, the beneficiary's claimed patent, or how the beneficiary's position abroad involved 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

Accordingly, the petitioner has not met its burden of proof, and the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a position involving specialized knowledge. Although the petitioner asserts that the beneficiary's position abroad involved specialized

knowledge, the petitioner has not articulated any basis to such claim. Other than listing three projects involving the beneficiary and providing brief, conclusory statements about the specialized knowledge involved in said projects, the petitioner has not identified any aspect of the beneficiary's position which involved special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position abroad that would differentiate that employment from the position of "design engineer" at other employers within the petitioner's industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

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 was employed by the foreign entity for one continuous year in a position that involved specialized knowledge. Accordingly, the appeal will be dismissed.

III. The Beneficiary's Specialized Knowledge and Proposed U.S. Employment

Beyond the decision of the director, the AAO finds that the record is not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that the beneficiary would be employed in the United States in a capacity requiring specialized knowledge.

In support of the petition, the petitioner submitted a letter describing the beneficiary's specialized knowledge and the difficulties in imparting such specialized knowledge to another individual as follows:

[The beneficiary] possesses advanced specialized knowledge of [the petitioner's] product development design. Since working with [the foreign entity], [the beneficiary] has been engaged in vehicle exterior trim design projects. Through his participation in these projects, he has acquired extensive knowledge of 3D data builds, vehicle exterior ornamentation structure design, process feasibility analysis for injection, painting, welding, adhesive and punching, ability of dimension analysis, and DTS feasibility check and ability of finishing Design Failure Mode and Effects (DFMEA) and control plan.

As [the beneficiary] has been highly involved in several design and manufacturing projects launched in China, he has advanced knowledge of system design specifications and design rules as they pertain to [the petitioner] products and projects.

The level of knowledge that [the beneficiary] possesses is uncommon within [the petitioner], as he possesses advanced specialized knowledge acquired from working on specific projects

within our organization. Due to the fact that hands-on training is required in order to achieve the level of knowledge and experience that [the beneficiary] possesses, it would be a difficult and time-consuming process to impart an equivalent level of expertise to another individual. It would take another employee at minimum a year to achieve the minimum knowledge and experience necessary to perform the required position responsibilities. As mentioned above, [the beneficiary] is coming to the United States to participate in product design activities for a project with [redacted] that will be launched in China.

The petitioner's initial evidence consisted of the petitioner's letter, evidence of the beneficiary's educational qualifications, a corporate organizational chart submitted to establish the parent-subsidiary relationship between the foreign and U.S. companies, and a copy of the 2011 Annual Report for the petitioner's corporate group.

In response to the RFE, the petitioner described the beneficiary's specialized knowledge and the U.S. position as follows:

[The beneficiary's] role in the project is to interface between [the petitioner] and [redacted] and act as the subject matter expert to see the design phase implemented into production in China. [The petitioner] urgently requires [the beneficiary's] expertise in the United States to ensure the production schedule does not get delayed.

* * *

[The beneficiary] is responsible for the design of exterior plastic components to be used on a future vehicle to be manufactured and marketed in China. For purposes of quality standard controls, the design team is located at our facility in Troy, Michigan, where design experts from [redacted] and [the petitioner] can work together to resolve technical issues prior to implementing production in China.

As a design engineer and expert in bumper design, [the beneficiary] owns the development of 3D and 2D design models for the new project. He is responsible for developing the technical specifications for the project including preparation of the dimension tolerance specifications, design failure mode effects analysis, and the bill of materials for the project. He is responsible for the section design and technical feasibility analysis based on the styling surface.

In addition to utilizing his technical expertise on the actual design of the product, [the beneficiary] has been selected as the interface between [the petitioner] and [redacted] on the project design and implementation. [The beneficiary] is responsible for developing program documents in Chinese for the manufacturing team including the product description sheet, design issue list, parts design tracking list, and the customer peer review report. With the

remainder of his time he works with the Chinese suppliers to determine the feasibility and cost projections for the project, acts as an interface between [redacted] and [the petitioner] on design issues, ensures that the final project design meets applicable standards and laws in China while also meeting customer requirements.

[The petitioner's] exterior trim products and their design specifications are patented and closely held intellectual property. As a result the knowledge that [the beneficiary] has acquired is unique to [the petitioner]. [The beneficiary] will be responsible for a large portion of the design of this project, and more importantly is uniquely positioned to transfer this design back to our manufacturing facilities in China to implement production.

[The beneficiary] was selected to work on the [redacted] project in part due to his previous design work with other projects. He was responsible for the [redacted] trim project, the [redacted] exterior trim project, and the [redacted] exterior trim project, where he excelled in the project development. In fact, in the [redacted] exterior trim project, [the beneficiary] developed a patent for the rear bumper.

[The beneficiary] received specialized training from [redacted] to train him on their requirements, and has received additional training from [the petitioner] on bumper structure design, Geometric Dimensioning & Tolerancing training, and Computer Aided Engineering training. Prior to joining [the petitioner] [the beneficiary] also gained unique design experience with sheet metal and plastic parts at [redacted]. This training and experience make him ideally suitable for the role.

The petitioner's response to the RFE consisted of letters from counsel and the petitioner, an income certificate from the foreign entity, and copies of two USCIS policy memoranda. The AAO acknowledges the petitioner's objections to the length of the nine-page RFE. However, the director's requests for documentation of the beneficiary's completion of training and more detailed descriptions of the beneficiary's current and foreign duties, the claimed specialized knowledge, and how such knowledge was obtained, were well within the director's discretion pursuant to the regulation 8 C.F.R. § 214.2(l)(3)(viii). Again, 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).

Based on the evidence in the record, the petitioner has not established that the beneficiary possesses specialized knowledge or that the beneficiary would be employed in the United States in a capacity requiring specialized knowledge.

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). USCIS 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.

In the present case, the petitioner's claims are based on the first prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets. The petitioner indicated that the beneficiary has been employed at the foreign entity for 21 months and has worked on three different client projects. As a result, the petitioner claims that the beneficiary: "possesses advanced specialized knowledge of [the petitioner's] product development design"; is an "expert in bumper design"; "owns the development of 3D and 2D design models for the new project"; and has "developed a patent for the rear bumper" in one of the projects he worked on at the foreign entity. However, as discussed above, the petitioner has not provided any clear descriptions of the beneficiary's role in each project and what each of the projects entailed in order to establish that the beneficiary acquired specialized knowledge through his work on the listed projects.

Further, the petitioner described the beneficiary as one of two employees possessing the described specialized advanced knowledge and qualified for the position in the United States. The petitioner indicated that the beneficiary received training from the [redacted] company in the United States in order to qualify for the U.S. position and work on the current project in the United States. The petitioner also indicated that the beneficiary received specialized training from the petitioner on bumper structure design, "Geometric Dimensioning & Tolerancing," and computer aided engineering. However, the petitioner has not provided any evidence of the beneficiary's completion of any of the listed training or information on what the training entailed. The petitioner did not provide any information on the length of training, qualification requirements to attend training, knowledge gained from training, etc. in order to establish that the beneficiary has received specialized training that rises to the level of having acquired specialized or advanced knowledge. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the record, the beneficiary joined the petitioning company with no engineering experience in the automotive industry. The petitioner has established that he has worked for the foreign employer assigned to three different client projects over a period of 21 months, but it has not provided a detailed description of his duties or roles for these projects. The petitioner claims that it has "internally developed product development processes," but has not described or documented these processes or how knowledge of such processes is typically gained within the organization, such that the AAO could conclude that familiarity with these processes constitutes specialized knowledge. The petitioner has not documented the beneficiary's completion of internal or external training courses offered by the foreign entity or by the petitioner's client. While the AAO does not doubt that the beneficiary is qualified to fulfill the duties of the U.S. assignment, the petitioner claims that the beneficiary possesses specialized knowledge, or that he would be employed in a position requiring specialized knowledge, fail on an evidentiary basis.

Other than listing three projects involving the beneficiary and a statement indicating that the beneficiary has received training from the petitioner on three topics and training from the [redacted] company for the current project, the petitioner has not clearly demonstrated that the beneficiary possesses a level of knowledge that is specialized or advanced. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position abroad and in the United States that would differentiate that employment from the position of "design engineer" at other employers within the industry.

The AAO acknowledges the petitioner's reliance on a 1994 legacy Immigration and Naturalization Service policy memorandum. See Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Special Knowledge," (March 9, 1994). However, the Puleo memorandum concluded with a note about the burden of proof and evidentiary requirements for the L-1B classification:

From a practical point of view, 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.

Puleo Memorandum at p.4.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. For this additional reason, the petition cannot be approved.

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

IV. Conclusion

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

ORDER: The appeal is dismissed.