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

[redacted]

DATE: APR 29 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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,

Eric Haldan
for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner was incorporated under the laws of the State of California. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicates it was established in 1995, employs 65 personnel, and had earned a gross annual income of $36,400,000 when the petition was filed. The petitioner states that it is engaged in postproduction editing, sounds and visual effects for television commercials. The petitioner claims it is affiliated with a company organized in the United Kingdom. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity, as assistant editor, visual effects and technical support for a three-year period.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship with the foreign entity and failed to establish that the beneficiary possesses specialized knowledge or had been or would be employed in a capacity that requires specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes a qualifying relationship and that the beneficiary's role in the company meets the eligibility requirements for L-1B classification.

I. The Law

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

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

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

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

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

> (*1*) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (*2*) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides in pertinent part:

> (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
>
> * * *
>
> (K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
>
> (L) "Affiliate" means [in pertinent part]:
>
> > *(1)* One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
> > *(2)* One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

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 Issues on Appeal

A. Qualifying Relationship

Facts and Procedural History

The first issue to be discussed is whether the petitioner established a qualifying relationship with the foreign entity that employed the beneficiary for one continuous year within the three years preceding the beneficiary's application for admission into the United States. Upon review, the AAO concurs with the director's decision to deny the petition on this issue.

On the Form I-129 Supplement L, the petitioner noted that it is an affiliate of the foreign entity, in that "100% of the owners of [the petitioner] own 75% of the [foreign entity]." The petitioner provided its incorporating document and its 2010 Form 1120S, U.S. Income Tax Return for an S Corporation, showing that the petitioner had issued stock to three individuals in equal amounts. The petitioner also included copies of share certificates, dated July 14, 2008, issued by the foreign entity to four individuals in equal amounts. Three of the foreign entity's four shareholders also held the petitioner's stock.

The director issued a request for evidence (RFE), requesting, *inter alia* evidence that the petitioner and the foreign entity share common ownership and control.

In response, the petitioner referenced the second prong of the definition of affiliate found at 8 C.F.R. § 214.2(l)(1)(ii)(L) which indicates that an affiliate relationship exists between the petitioner and the foreign entity if they are: "[o]ne of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." The petitioner noted that the foreign entity is owned by four individuals who each own

one share (25 percent) of the foreign entity and that the petitioner is owned by three individuals who each own one share (33.33 percent) of the petitioner. The petitioner also provided a document titled Amended and Restated Phantom Stock Agreement (Phantom Stock Agreement) effective January 1, 2010 between the petitioner and The Phantom Stock Agreement identified the only three shareholders of the petitioner as , , and . The Phantom Stock Agreement provided with rights to distribution and payments in the form of phantom stock as if he were a shareholder of the petitioner. Limitations on the "phantom stock" were included at section 3 of the Phantom Stock Agreement which stated that the agreement did not:

> Give or bestow upon any rights to any common stock or any other stock of the Company, or any of the rights or privileges accorded beneficial or record holders of the issued and outstanding shares of the common stock or any other stock of the Company, including, without limitation, any dividend or voting rights.

The Phantom Stock Agreement also expressly stated at section 3, that the ability to terminate employment was not limited in any way.

In an affidavit signed by on November 20, 2009, identified himself and the three other shareholders of the foreign entity as the foreign entity's board of directors. also identified himself as an officer of the petitioner. further stated that the foreign entity's board was controlled by the petitioner's board of directors.

As observed above, the director determined that the petitioner had not established a qualifying relationship between itself and the foreign entity.

On appeal, counsel for the petitioner asserts that the director did not take into account that the petitioner and the foreign entity were designed as a highly integrated operation to provide service both in the United States and Europe and that its operations and corporate structure were created to fulfill that objective. Counsel notes that the United Kingdom entity was set up by the principals of the petitioner in 2008 to provide services to one of the petitioner's major clients, Counsel confirms the facts initially provided regarding the ownership of the stock of the two companies and avers that although shares in the profits of the petitioner, he did not take any ownership of the petitioner for personal reasons. Counsel also contends that the United Kingdom entity was structured to be a dependent of and to serve the petitioning company.

Analysis

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority

to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Although counsel asserts that the two companies are integrated and that the foreign entity is dependent on the petitioner, the record does not establish an affiliate relationship as defined in the regulations. Neither legacy Immigration and Naturalization Service nor United States Citizenship and Immigration Services (USCIS) has ever accepted a random combination of individual shareholders as a single entity, so that the group may claim majority ownership, unless the group members have been shown to be legally bound together as a unit within the company by voting agreements or proxies. To establish eligibility in this case, it must be shown that the foreign entity and the petitioner share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

In this matter, no one shareholder holds a majority interest in either corporation. Rather, the U.S. petitioner is owned by three individuals and the foreign entity is owned by four individuals. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity or individuals control both entities. The Phantom Stock Agreement, provided by the petitioner, expressly limits (the fourth owner of the foreign entity) right to vote to establish a board for the petitioner or to take any action prohibited by the U.S. petitioner's board. Accordingly, the petitioner may be controlled by two of its three owners and any actions of these two individuals (and thus the petitioner) in attempting to control the foreign entity could be blocked by two of the four owners of the foreign entity. The companies are not affiliates as both companies are not owned and controlled by the same individuals. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

We acknowledge counsel's assertion that the companies are closely integrated and work together; however, the record does not establish that the foreign entity is dependent on the petitioner. 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)). The petitioner has not provided probative evidence establishing that a qualifying relationship existed between the foreign company and the United States entity when the petition was filed. Accordingly, the appeal will be dismissed.

B. Specialized Knowledge

The next issue to be addressed is whether the petitioner will employ the beneficiary in a specialized knowledge capacity.

Facts and Procedural History

On the Form I-129 the petitioner indicated it is engaged in postproduction. In the petitioner's letter appended to the petition, the petitioner stated the beneficiary would "serve in the specialized knowledge capacity of Assistant Editor, Visual Effects and Technical Support at our facility in Santa Monica, California to assist in the seamless transition of commercial footage between our U.S. and UK offices." The petitioner noted that the beneficiary had been employed by the foreign entity since July 2009 "creating visual effects and providing technical support on international work and will draw on his specialized knowledge of the company's proprietary production process relating to the execution of commercials." The petitioner indicated that the beneficiary in the U.S. position would:

- Prepare material for voice over recording sessions, oversee the sessions and load the material into the company's Edit system;
- Record material from the utilizing a scan converter and keep track of time and materials to ensure costs are properly tracked throughout the projects;
- Be responsible for the visual effects of shoots in the U.S. whose footage will be used for the European and international market;
- Attend both the "Test" and "Air" versions of the commercials and create temporary visual effects as required for each scene;
- Load all footage from the video feeds onto a laptop and organize and track the material edited on the set;
- Work with [the petitioner's] staff to create temporary product clean up and visual effects for multiple versions of the shoot and generate QuickTime movies and DVD's from U.S. the [*sic*] footage;
- Travel back to the UK where he will prepare materials for final finishing and oversee final visual effects and the manufacturing and quality control of the various delivery elements of the commercials for the international audience.

The petitioner explained that the beneficiary's knowledge of the company's specialty operations and procedures as well as industry practices, and his knowledge of operating conditions in the United States are essential to performing this position in the United States. The petitioner noted the beneficiary's "unique body of specialized knowledge and experience gained through his employment with [the foreign entity] in the UK of the advanced proprietary procedures that are necessary for the successful operation of [the petitioner's] business in the U.S."

The petitioner also provided an overview of the beneficiary's duties for the foreign entity. The petitioner stated that the beneficiary is "responsible for pre-production, creates visual effects for test shots in London, performs crucial editing and finishing work and provides key technical support and system maintenance of all editing systems and setups." The petitioner reiterated that the beneficiary had "gained an in-depth and specialized knowledge of [the petitioner's] proprietary products and processes relating to the production of commercials." The petitioner added that the beneficiary:

- Records materials from the utilizing a scan converter;

- Prepares all material for voice over recording sessions including creating scratch audio and oversees all audio sessions;
- Loads the voice over into the Edit system;
- Attends "Test" shoots where he creates temporary visual effects, vfx shots in After Effects or Mocha, and supervises online sessions;
- Responsible for the organization of all material on set;
- Creates temporary product clean up and visual effects for multiple versions of footage;
- Generates QuickTime moves [*sic*] and DVD's, and oversees quality control;
- Prepares materials for finishing sessions where he oversees the final visual effects and the manufacturing and quality control of the various delivery elements associated with production;
- Keeps track of all essential time and materials related to the commercials so that we can accurately track costs associated with each job; and
- Provides critical technical support, ensuring all edit systems are set up and running properly throughout all phases of production.

The petitioner advised that it and the foreign entity "handle projects for one of our most prominent clients, the agency of record for and that "our work for consists of developing and executing commercials for The petitioner indicated that the commercials are shot in the United States and the shots are edited for the particular market and "[f]ootage that falls under the umbrella of [the foreign entity] is then sent back to the UK for editing and completion." The petitioner explained that to make the transition of the footage back to the UK more efficient, the assistant editor from the UK supervises the shoot in the United States to create initial visual effects and perform the initial editing of the footage. The petitioner noted that the assistant editor's "involvement in every step of the process will allow [the foreign entity] to continue to shoot necessary footage in the U.S. while improving the transition of this footage for release to the international market."

The director issued a request for further evidence (RFE), requesting, *inter alia* evidence of the specialized knowledge position in the United States. Among other items, the director specifically requested more detailed information regarding the beneficiary's duties in the United States, including the beneficiary's knowledge of the petitioner's product or service, special or advanced duties, and the training, if any, the beneficiary would provide.

The petitioner in response noted that although it shot all footage for the commercials in the United States the pre-production and editorial activities are executed by the foreign entity. The petitioner explained that the "different markets have different styles, display visual effects differently and have different regulatory requirements" and accordingly the beneficiary was needed on hand to participate in the shoot to "ensure the footage will not only meet the requirements for the European audience, but also the specific technical and regulatory requirements for each country." The petitioner also noted that the beneficiary "uses his specialized knowledge of our client's workflow and our preferred visuals effects (VFX) techniques along with this advanced knowledge of the specific advertising regulatory and technical requirements for each country in which our

commercials will air to produce the visual effects and provide the necessary technical support to create the final end product."

The petitioner asserted that the beneficiary's employment with the foreign entity was in a specialized knowledge capacity. The petitioner stated that the beneficiary had extensive knowledge of the product and workflow process of , as well as the regulatory and technical requirements for each of its different markets in Europe. The petitioner claimed that a "normal industry workflow process" generally includes only six steps; however the workflow process for international projects is composed of twelve steps, requiring extensive knowledge of s specific processes and requirements. The petitioner added that the beneficiary is well versed in the different regulatory requirements of the various European markets and knows how to factor the regulatory considerations into the overall workflow. The petitioner listed the twelve steps outlining the workflow in creating a commercial including the initial testing phase (six steps) and the "for air" steps (five steps).[1] The petitioner identified the beneficiary's input in these various steps as relating primarily to visual effects and the integration of the necessary technical requirements relating to European broadcast regulatory requirements and workflow processes. The petitioner again noted the beneficiary's experience working with and his intimate knowledge of product and their high standards.

The petitioner emphasized that the beneficiary's extensive knowledge of the workflow, its products, and how to incorporate the relevant regulatory requirements related to content, time restraints, and audio and visual effects into the workflow is extremely valuable to the company. The petitioner stressed that the beneficiary's knowledge could only be gained through experience working for the client and thus, only through experience of its business.

The petitioner indicated that the beneficiary in the proffered position would "directly participate in the production of footage for commercials for an international audience." The petitioner also noted that the beneficiary would maintain his role with the foreign entity where he would "continue to be responsible for ensuring all visual effects and regulatory requirements are considered and incorporated into the test phase of the pre-production process" and would continue to be responsible for the editorial activities associated with visual effects to create a complete product at the end of the workflow. The petitioner clarified that it required the beneficiary to travel to the United States for the actual production and initial editorial phase in the United States, specifically steps eight through ten of the workflow involving the "for air" pre-production, "for air" production, and "for air" editorial steps.

Upon review of the evidence in the record, the director denied the petition. On appeal, counsel asserts that the director made a critical error when focusing on the duties of the beneficiary rather than on the role he plays in the project. Counsel contends that the beneficiary is "thoroughly familiar with a very complex 'workflow process' of the Company in producing and editing commercials, and must effectuate a highly complex workflow process for an extremely demanding client, which involves twice the number of steps of the normal editing process." Counsel claims that

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[1] The first step involves the creation and presentation of concepts internally which is completed by the advertising agency.

in addition, the beneficiary must adapt and apply commercial needs to various European markets, all with different advertising and regulatory requirements. Counsel avers that the beneficiary is coming to the United States to participate in a project so that he is fully familiar with all aspects and components of this "shoot" and the initial editing to seamlessly continue the process when the product is transferred to Europe for European completion and production. Counsel argues that for "each specific project for which [the beneficiary] is embedded, the role he plays makes him a true key employee and specialist for that project." Counsel claims that the beneficiary is the only foreign entity employee who is embedded in the project in the United States so as to facilitate production as it occurs in the first phase of the project in the United States and also in the second phase of the project in Europe. Counsel reiterates that the beneficiary "has specialized knowledge of the client's products, its specific workflow process, and preferred VFX, how it is extremely valuable to the Company's competitiveness in the marketplace, and that the knowledge is not generally found in the industry." Counsel acknowledges that the duties of the beneficiary are the same or similar to the duties of other similarly situated editors but asserts that it is the role the beneficiary plays as the one individual from the foreign entity who will be in the United States representing that foreign entity and thus assuring a seamless transition of the project that makes the beneficiary a key employee.

Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its products or processes require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

In the present matter, the petitioner does not clearly state whether its claim is based on either the first or second prong of the statutory definition. The petitioner asserts generally, however, that the beneficiary has special knowledge of the company's project assisting in the making of commercials for and the project's application in international markets. Upon review the record does not satisfy either prong of the definition.

Although the petitioner has articulated the nature of the project and the steps involved in actuating the project, the petitioner has not provided evidence substantiating the nature of the beneficiary's claimed specialized knowledge. For example, the petitioner asserts that the project requires additional steps in producing a commercial with visual effects (the workflow) than other companies who produce commercials with visual effects. The petitioner, however, provides no documentary evidence in support of this assertion. 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, supra.* The petitioner also claims that the beneficiary's experience working at the foreign entity on projects resulted in the beneficiary's specialized and advanced knowledge. However, the petitioner does not establish what specific knowledge of the workflow could not be conveyed to similarly experienced visual effects editors. Neither does the petitioner identify any particular training necessary to prepare the beneficiary to perform these duties for the work. Most employees would possess project-specific knowledge relative to one or more international clients and the client's products or systems. Although any client project undertaken by the petitioning company, or any other production company, is unique in that it reflects the particular technological needs and business requirements of the individual client requesting the consulting services, USCIS cannot find that an employee's knowledge of a client project, without more, is sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any special effects editor in possession of project experience. The fact that other workers may not have the same level of experience with the petitioner's methodologies as applied to one component of a specific client project is not enough to establish the beneficiary as an employee possessing specialized knowledge.

Moreover, the petitioner does not describe how the beneficiary gained his knowledge of workflow within the foreign entity, other than through "general" experience. The petitioner does not identify at what point in the beneficiary's employment with the foreign entity, the petitioner considered the beneficiary adequately trained and able to perform the duties for the petitioner in the United States. Accordingly, there is insufficient information in the record to accurately analyze the

beneficiary's experience with the project or the petitioner's methodologies to establish that the beneficiary possesses specialized knowledge.

Regarding the proposed position, the petitioner has not established that the duties of the position require specialized knowledge. Counsel for the petitioner acknowledges that the duties of the position can be performed by any similarly situated editors and relies only on the beneficiary's experience with the specific project as the factor that elevates the beneficiary's position to a position that requires specialized or advanced knowledge. However, as discussed above, the petitioner has not articulated with specificity how editing the visual effects of the commercials could not be performed by others within the industry or others in the petitioner's organization. Again, although the beneficiary's creative skills, and knowledge of European regulations and of the demands of the organization are qualities the petitioner desires, the petitioner has not provided probative evidence establishing that the project involves a unique process that requires this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

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*, *supra*.

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. 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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition will remain denied.