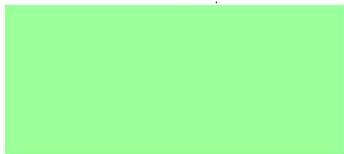


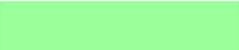


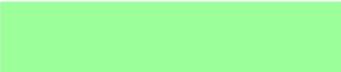
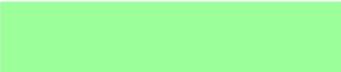
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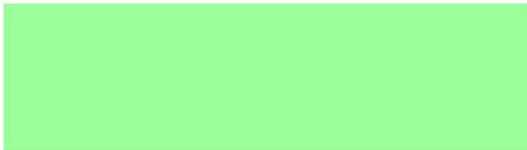
OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:

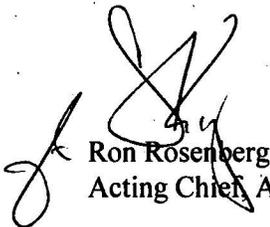


**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office 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, 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 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 described itself as the world-leading supplier in telecommunications. The petitioner is an affiliate of [REDACTED], based in India. It seeks to employ the beneficiary as a Senior Solution Integrator for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary has been or will be employed in a specialized knowledge capacity. The director stated that the petitioner failed to show that the beneficiary's knowledge of the petitioner's product amounts to 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 for review. On appeal, counsel submits a brief in which she contends that the petitioner has already provided a sufficiently detailed description of the petitioner's job duties and that the director erred in denying the petition in part because he failed to recognize that specialized knowledge can be acquired through on-the-job work experience.

#### 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.

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 issue to be addressed is whether the petitioner established that the beneficiary was employed in a specialized knowledge capacity, that he possesses specialized knowledge, and that he will be employed in the United States in a specialized knowledge capacity.

The petitioner is a multinational corporation established in 1984 as a supplier in the telecommunications industry. The petitioner claimed that its group of affiliates worldwide employs

90,000 individuals and has \$32.1 billion in gross annual income. The petitioner seeks to hire the beneficiary as a Senior Solution Integrator at its [REDACTED] Texas office location.

The beneficiary attended [REDACTED] in India from 2002 to 2006 and graduated with a degree in Information Technology. The beneficiary has worked for the foreign entity since December 2008. The petitioner asserted that the beneficiary's training and experience with the foreign entity has provided him with specialized knowledge of the following of the petitioner's proprietary products: [REDACTED]

In its letter accompanying the initial submission, the petitioner indicated that the beneficiary will perform the following duties as a Senior Solution Integrator:

- installing, commissioning, upgrading, and integrating [the petitioner]'s proprietary [REDACTED]
- integrating and commissioning complete [REDACTED] solutions;
- upgrading the numerous servers in the [REDACTED] complex to the latest release;
- testing the various applications in [REDACTED] for Fault, Performance, and Configuration applications once upgrade or initial install is completed;
- coordinating and managing different Operation and Maintenance activities with [REDACTED] network teams;
- defining the new [REDACTED]
- maintaining and developing shell and [REDACTED] scripts as required;
- providing training to customers and internal [petitioner] teams;
- working maintenance windows to implement MOP's in customer networks;
- updating [the petitioner]'s Business Objects reports packages and universes according to customer needs;

- applying emergency correction and correction updates;
- troubleshooting issues that are found during testing or those that are raised by customers;
- providing daily status reports to Project and Line managers on task progress;
- providing End to End Support of issues raised by customers;
- ensuring the servers are consistently upgraded to the best and latest software levels with a 100% success rate of all assigned upgrades;
- troubleshooting [REDACTED] related problems;
- troubleshooting Sybase, [REDACTED] and Microsoft operating platforms, Sybase ASE 12.5/15, Sybase IQ 12.7, VERSANT, CORBA, Business Objects 5.1, 6.5 XI 3.1, TCP/IP, LDAP, DNS, NFS, SNMP, Novell LDAP;
- handling [REDACTED] emergencies;
- troubleshooting [REDACTED] side for Statistical and Alarm Problems;
- troubleshooting Solaris Related problems in [REDACTED] and other similar products (e.g., [REDACTED]);
- troubleshooting VERITAS; which includes using VERITAS Netback up 6.5 and creating Disk Group, Volumes, plexes on raw disk, mirroring, synchronizing mirrors, detaching mirrors, troubleshooting at time of plex, volume or disk group failure;
- implementing project management methodologies to manage projects from analysis, design, planning, and implementation through completion;
- ensuring a high degree of customer satisfaction by connecting with customers;
- constructing and delivering introductory presentations and helping customers attain achievable development plans, schedules, and project outcomes; and

- liaising between customer and project team expectations to ensure required results by providing ongoing written and verbal feedback on progress.

The petitioner stated that the beneficiary will perform these same duties in the United States. In its letter submitted with the initial petition, the petitioner asserted that the beneficiary obtained specialized knowledge of the petitioner's products and internally-developed processes and procedures through his on-the-job experience and in-house training with the foreign entity.

According to the petitioner, its engineers can have different areas of specialization, which include 1) developing or enhancing the technology, 2) prepping the client network and installing the technology, or 3) maintaining and running the technology. The petitioner then claimed that the beneficiary is part of a small subset of 15 people or .54% of the more than 2,700 individuals working at the proposed site location in the United States.

Accompanying the petition, the petitioner submitted evidence of the beneficiary's degree and a degree equivalency certification. The petitioner also provided a certificate of completion for the beneficiary showing he completed the course [REDACTED] for [REDACTED] at [REDACTED] during the period from May 2, 2011, through May 5, 2011. The petitioner also submitted a copy of a manual entitled "Introduction to [REDACTED]" as well as its 2010 Annual Report.

The director issued a Request for Evidence (RFE) in explaining that, although the beneficiary appears to be knowledgeable, the law requires that he have more than just training and skills in order to qualify as a specialized knowledge employee. The director requested evidence that the beneficiary has specialized knowledge and that the beneficiary's proposed position in the United States requires specialized knowledge by providing, *inter alia*, a detailed description of the beneficiary's proposed duties on a daily basis, an explanation of which duties require specialized knowledge and why, the specific specialized knowledge processes or methods used to perform the beneficiary's duties, how long it would take to train someone so that he or she possessed the requisite specialized knowledge, how the beneficiary's training was different from that of his colleagues, and when and how it was determined that the beneficiary had specialized knowledge. The RFE further requests more documentation regarding the training received by the beneficiary, including a letter from the foreign company's human resources department detailing how the beneficiary obtained his specialized knowledge, as well as the duration and dates of completion of all training courses.

In response, the petitioner submitted a brief and additional evidence. In the brief, counsel contended that the petitioner's list of the beneficiary's duties was sufficiently detailed to demonstrate that the proposed position requires specialized knowledge. Counsel stated that it has shown the beneficiary's knowledge surpasses that of other Senior Solution Integrators.

The petitioner submitted a letter repeating its previous explanation regarding the beneficiary's specialized knowledge. It also provided a chart showing the job duties listed and the claimed specialized knowledge required for each. The petitioner stated that it takes a minimum of one year of experience to reach the level of expertise necessary to perform the tasks that will be required of the beneficiary. The petitioner also provided the following list of training courses completed by the beneficiary: [REDACTED] System Administrator (Part I) from March 1, 2007 to May 1, 2007, [REDACTED] System Administrator from February 1, 2009 to February 7, 2009, [REDACTED] System Administrator (Part II) from September 1, 2009 to October 2, 2009, and [REDACTED] System Administrator from May 2, 2011 to May 6, 2011.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or will be employed in a specialized knowledge capacity. The director found that the petitioner failed to show that the beneficiary's experience with the petitioner amounted to specialized knowledge.

On appeal, the petitioner submits a brief in which it alleges that the director erred in failing to acknowledge the detailed list of job duties it previously provided. It further emphasizes that on-the-job training can and did result in specialized knowledge in the case of the beneficiary. The petitioner also submits new document called "Guidance on L. Visas and Specialized Knowledge."

### III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary has worked or will work 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.

In the present matter, the petitioner does not clearly state whether its claim is based on the first or second prong of the statutory definition. The petitioner asserts generally that the beneficiary has special knowledge of the company's product and its application in international markets, but also asserts generally that the beneficiary's knowledge of the company processes and procedures is advanced. Upon review, the evidence of record does not satisfy either prong of the definition.

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

The petitioner submitted a lengthy list of the petitioner's job duties. It also submitted a chart indicating the specialized knowledge that each duty will require. Although the petitioner named 25 duties that the beneficiary will regularly perform, its lists do not contain sufficient explanation as to why the beneficiary's duties require specialized knowledge, as opposed to the general skills and

education associated with technical engineering.

In analyzing the beneficiary's eligibility under the first prong of the statutory definition, the relevant question is whether the beneficiary has special knowledge of the petitioner's product in the international market. The petitioner claims that the beneficiary has specialized knowledge of six proprietary products, listed below with summaries of the petitioner's descriptions of each:

- [REDACTED] system for centralized operation and maintenance of mobile networks, the nodes specific to each network, and the service layer equipment;
- [REDACTED] a portfolio that enables operators to build radio networks based on a mixture of [REDACTED] technologies;
- [REDACTED] part of an Operation and Maintenance internet; guards the radio access networks developed by the petitioner;
- [REDACTED] provides backup to the [REDACTED];
- [REDACTED] a network performance management application that collects network data;
- [REDACTED] a radio controller that delivers the highest capacity in the market.

These products may be proprietary. However, the petitioner did not explain how they are different from other similar products on the market, such that the beneficiary's tasks involving these products require specialized knowledge, as opposed to general training in the field.

The petitioner stated that its engineers can have different specializations, such as: 1) developing or enhancing the technology, 2) prepping the client network and installing the technology, or 3) maintaining and running the technology. However, it is not clear that the beneficiary is considered an engineer, as the proposed position title is Senior Solutions Integrator. In addition, the petitioner does not claim that the beneficiary has a specific specialization and the list of job duties provided does not shed light on which if any of these specializations applies to the beneficiary. The petitioner

stated that the beneficiary will be 1 of only 15 people with his skills at the proposed location. However, the petitioner provided no further details on the specific skills or specialized knowledge that make the 15 individuals unique and different from other similarly situated employees.

In the director's denial, he notes that the first of the four courses listed on a table entitled "Training History for [the beneficiary]" predates the beneficiary's employment with the foreign entity. The petitioner claims that the beneficiary has worked for the foreign entity since December 2008. However, the table states that the beneficiary completed the course [redacted] System Administrator (Part I) from March 1, 2007 to May 1, 2007. The director noted that this training occurred more than one and a half years prior to the beneficiary's employment. On appeal, the petitioner responds that it did not allege the beneficiary had specialized knowledge of [redacted] which is not proprietary, but a widely used third party program.

On review, the more relevant point of the director's observation is that the petitioner provided evidence inconsistent with its own claims. In the letter it submits on appeal, the petitioner describes the table of training courses as "Copies of the Beneficiary's training certificates and a list of training courses that the Beneficiary has attended since being employed with [the petitioner]." Thus, according to the table, the beneficiary was employed with the petitioner at least by March 1, 2007. This clearly contradicts the petitioner's claims elsewhere in the record that it only began employing the beneficiary in December 2008. 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 petitioner's attempt to discount the inconsistency was misguided, as it fails to address the conflicting information. As a result, the credibility of the training table submitted is questionable. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner emphasized the proprietary nature of its products and stated the beneficiary's experience with them equates to specialized knowledge. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its processes, products or other aspect of its operations require this employee to have knowledge beyond what is common in the industry, and knowledge that is not commonplace within the company itself. Although it is accurate to say that the statute does not require that the advanced knowledge be narrowly held throughout the company, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company.

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the company's

products or processes gained during his employment with the foreign entity is advanced. The petitioner states that the beneficiary is one of only 15 out of over 2700 employees at the petitioner's facility that possesses the beneficiary's knowledge. However, the petitioner has not supported that statement with documentary evidence. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). Furthermore, counsel for the petitioner provides no explanation for this assertion or information regarding how it came to this conclusion. Simply stating that no one else has the same experience or training as the beneficiary is not sufficient to meet the petitioner's burden of proof.

The petitioner repeatedly emphasizes the beneficiary's hands-on experience. The petitioner accurately stated that such experience can create specialized knowledge. However, the petitioner fails to provide an adequate explanation of the beneficiary's experience and how this has resulted in specialized knowledge. The petitioner gave no explicit examples of work the beneficiary has performed beyond providing a generic list of job duties. Although they involve the petitioner's products, the duties themselves are those typical of someone working in the industry. Although the petitioner provided brief descriptions of its proprietary products, it failed to articulate the extent of the beneficiary's experience with the products and how they differ from other similar products on the market.

The RFE requested evidence of the beneficiary's training in the form of a letter from the petitioner's human resources department indicating the pertinent training courses in which the beneficiary participated, as well as the duration of the courses, the number of hours spent each day, the completion dates, and certificates of completion. The RFE also instructed the petitioner to explain how the beneficiary's training differs from the core training provided to other employees.

The petitioner provided a table listing four training courses completed by the beneficiary. As indicated previously, the credibility of the chart is in question. Even if the trainings listed were considered accurate, however, the petitioner itself has stated that two of the trainings do not pertain to the petitioner's proprietary products, but to a third party system used by the petitioner:

This leaves only two trainings attended by the beneficiary regarding the [REDACTED] and [REDACTED]. Both courses appear to have been approximately one week in duration.

Although counsel for the petitioner repeatedly stated that the beneficiary's knowledge surpasses that of others in his position, the petitioner provided no evidence or explanation to corroborate this claim. 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). The petitioner failed to adequately discuss how the beneficiary's training differs from that of other employees and did not indicate the standard training received by an individual in the beneficiary's position.

Counsel also claimed that the beneficiary has advanced knowledge of the petitioner's processes and procedures, stating:

The unique [petitioner] methodologies and procedures utilized by the Beneficiary are ones that are not generally available. Specifically, the Beneficiary has an in-depth understanding of the various procedures involved in the installation, commissioning, upgrade, and integration of this proprietary [petitioner] technology. This depth of knowledge, which is needed to conduct the job duties on a daily basis, could only have been gained through extensive prior experience with [the petitioner] and with these specific technologies and methodologies.

Again, the petitioner did not provide any further explanation or evidence regarding the processes and methodologies referenced above. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner stated that the beneficiary gained all of his specialized knowledge while working for the petitioner. It also stated that reaching the requisite level of knowledge required at least one year of specific experience with the petitioner or its subsidiaries. The petitioner began working for the petitioner in December 2008. He took the trainings regarding the petitioner's proprietary products from February 1, 2009 to February 7, 2009 and from May 2, 2011 to May 6, 2011. Although specifically requested in the RFE, the petitioner did not state at what point it considers the beneficiary to have obtained specialized knowledge.

For the reasons stated, the petitioner has not successfully demonstrated that the beneficiary's knowledge of the company's products gained during his employment with the foreign entity is specialized or advanced. The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, the petitioner has not established that familiarity with the petitioner's proprietary products constitutes specialized knowledge. It has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's products or processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the products developed by the petitioner are substantially different from those used by other companies in the petitioner's industry.

As the petitioner has failed to document any special or advanced qualities attributable to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps experienced or skilled, would be a "specialized knowledge" employee.

Counsel for the petitioner repeatedly contends that the petitioner has met the legal standard necessary in showing the beneficiary's eligibility. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In this case, the doubt created by the lack of specificity and explanation is not overcome by other evidence in the record. The AAO does not agree with counsel that this standard is clearly met based on the evidence submitted. 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.

#### IV. Conclusion

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.