



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUL 05 2013**

Office: VERMONT SERVICE CENTER

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, recommended denial of the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review pursuant to 8 C.F.R. § 103.4(a). The AAO will affirm the director's decision and deny the petition.

The petitioner filed this nonimmigrant visa petition seeking to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge 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 Delaware corporation engaged in customized software development, claims to be the parent company of the beneficiary's foreign employer, [REDACTED]. The petitioner seeks to employ the beneficiary in the position of Senior Software Engineer for a period of three years. The petitioner indicates that it will assign the beneficiary to work offsite at the [REDACTED].

The director concluded that the petitioner: (1) failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge; and (2) failed to establish that the beneficiary's employment at the unaffiliated employer's facilities would be permissible under section 214(c)(2)(F)(ii) of the Act, as created by the L-1 Visa Reform Act of 2004. The director observed that the beneficiary "will be primarily engaged in work on the client's systems" and not on processes that are specific to the petitioning company.

The director certified the decision to the AAO and advised the petitioner that it may submit a brief or other written statement for consideration within 30 days, pursuant to 8 C.F.R. § 103.4(a)(ii). As of this date, the AAO has not received a brief or statement from the petitioner, and the record will be considered complete.

#### 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.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

Finally, 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. Specialized Knowledge

The first issue addressed by the director is whether the petitioner has established that the beneficiary has been and will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

### A. Facts and Procedural History

In a letter submitted in support of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that it is

in many industry sectors including financial services, healthcare, mortgage, manufacturing, media and entertainment, retail, distribution, transportation and logistics, and energy.

The petitioner further stated that it "employs proprietary tools and delivery methodologies to develop and deploy software solutions to clients in our target industries," including

The petitioner explained that its tools and methodologies give the company a competitive edge in the IT market, making it a leading mid-tier IT services provider with 5,200 employees worldwide, including 720 in the United States and 4,500 in India and the United Kingdom. The petitioner emphasized that, of the 720 employees in the United States, a total of 193 are in L-1 nonimmigrant status. The petitioner stated that L-1 nonimmigrant employees comprise only three percent of its workforce and that "each candidate is selected based on their uncommon achievements at [the company] and their uncommon knowledge of [the company's] services and proprietary methodologies."

The petitioner indicated that it seeks to employ the beneficiary in the United States as a Senior Software Engineer on the Interface system project for the petitioner's client, . The petitioner described the beneficiary as the "key technical resource involved with the conceptualization, design, development and testing of [the company's] financial and sales software and related tools for the manufacturing industry and our client, . The petitioner stated that it requires the beneficiary's services in the United States "to complete the design and development of the Account Receivables financial applications system and design required interfacing solutions." The project objective is to "provide a solution for interfacing Account Receivable invoice transactions from the Receivables system to the new accounting system." The petitioner described the beneficiary's specific duties and responsibilities as the following:

- Analyzing and understanding [redacted] business and project needs and recommending solutions and action planning to improve processes and profitability;
- Analyzing design specifications and estimating time line for project assignment using [the petitioner's] [redacted] through software development life cycle;
- Decomposing software architecture into detail design components and development tasks;
- Identifying and developing the reusable modules and templates to improve [the petitioner's] project productivity;
- Designing and Developing new web services using service oriented architecture and [the petitioner's] [redacted] methodologies and integrating services to interface system;
- Implementing [the petitioner's] processor tool with required mappings and functional changes in the Interface project;
- Preparing test cases and performing testing using [the petitioner's] testing methodologies;
- Interpreting business requirements for customizing software for [the petitioner's] clients; and
- Ensuring that products created are within the scope of business requirement specifications.

The petitioner stated that the beneficiary has worked for its Indian subsidiary for two years as a Senior Software Engineer, where he has been assigned exclusively to manufacturing industry projects for [redacted]. The petitioner further described the beneficiary's qualifications as follows:

[The beneficiary] has been trained on our [redacted] methodologies to deliver [the petitioner's] services to the manufacturing industry and has been given progressively increasing responsibility that has lead [sic] to his in-depth understanding of [the petitioner's] proprietary methodologies, customized software design processes, services, testing and techniques. As a result, [the beneficiary] possesses special knowledge of our services to our manufacturing industry clients and how those services are applied internationally. He also possesses advanced knowledge of our proprietary delivery methods, including our design and testing processes and the specific needs and requirements of large manufacturing companies.

The petitioner stated that the beneficiary has completed training in Microsoft.Net Visual Studio 2005/2008, design patterns and UML, Team Foundation Server, and XML processor since joining the company, thus "enhancing his advanced knowledge in [the company's] processes and procedures." The petitioner indicated that the beneficiary is considered a "key resource on manufacturing industry accounts," and a "Subject Matter Expert in Sales Domain," who "was chosen above his peers for significant project assignments," including the following:

- Interface of OMAR to VATP system project: Serving as Subject Matter Expert, analyzing and designing new financial application, writing design document and preparing test cases for new application;

- [REDACTED] Analyzing and designing delivery mod application with offshore team, developing design components using [the petitioner's] framework, developing and conducting test cases and development and deployment management and preparing the Logic Model;
- [REDACTED] Analyzing and implementing web application requirement to allow for [REDACTED] employees to access global process information for [REDACTED] projects. Preparing system requirements specifications and technical data systems and managed the raising of technical issues appropriately and preparing the [REDACTED]
- Tfs Web Explorer Phase project: Analyzing and designing tool for web interface of [REDACTED] Team Foundation Server for source code storage and control operations. Implementing business logic, performing unit testing and managing development and deployment activities; and
- Sales Productivity Tool (SPT) project: Service as [the petitioner's] Subject Matter Expert, designing and developing Benchmarking module of SPT to track coaching and training performance. Developing presentation layer of application, developing business and data access logics and writing stored procedures for future projects.

The petitioner stated that the beneficiary's training and experience have given him a "unique combination" of skills including: extensive and advanced knowledge of the company's [REDACTED] methodologies; technological expertise gained by designing and developing sales and financial system applications; Subject Matter Expert in Sales Domain; and advanced understanding of the company's software development and process methodologies. The petitioner stated that this combination of skills and experience differentiates the beneficiary from other software developers who do not possess prior experience with the petitioner's group of companies.

The petitioner's supporting evidence included information from the company's website describing its "The [REDACTED] and evidence that it has obtained U.S. service marks for its [REDACTED]

The documentation also included a press release announcing the release of the company's [REDACTED] coverage."

The petitioner also provided a 2007 article titled [REDACTED]

[REDACTED] The petitioning company is one of three midtier global IT service providers featured in the article. According to the article, the petitioner operates a "hybrid service model" in which "lower priced resources in India and Malaysia are teamed with locally based architects, analysts, and project managers." The article goes on to describe the company's [REDACTED] which is used "pre-engagement, to ramp up provider staff for new projects." The article indicates that the company's project team is 75% conversant with its client's needs and domain on the first day of the engagement, and, by the 60 to 90 day mark, will be 100% conversant with the client's applications, technology and processes."

The petitioner provided a diagram of its [REDACTED] which indicates that U.S. account managers and project teams establish relationships with clients, outline initial project requirements and forward those requirements to the offshore team in India. The Indian team is responsible for providing detailed software design, development and testing, and then forwards software applications to the U.S. project team, at which time "select team members transfer to the United States." The U.S. software teams are then responsible to provide software service, maintenance, and support to U.S.-based clients, including installation, troubleshooting, analysis, training, and issue resolution.

Finally, the petitioner submitted additional documentation related to the beneficiary, including an experience certificate from the company's Indian subsidiary. The letter confirms the beneficiary's two years of employment as a senior software engineer and states:

His duties included requirements gathering, analysis, designing and execution of the projects using Microsoft Technologies like ASP.Net, C#, .Net Web Services, windows services, XML and Databases like Oracle and Sql Server.

[The beneficiary's] significant assignments which lead to his selection for transfer to the United States include develop the interface system using ASP.NET, C#, XML processor and .Net web services.

[The beneficiary] is a "Subject Matter Expert" in Sales Domain of a Leading Computer Manufacturing Client of [the petitioner].

During his tenure, [the beneficiary] participated in the following training to enhance his knowledge of [the company].

- Microsoft .Net 2005/2008 Training sessions
- Design Patterns and UML
- Team Foundation Server
- XML processor.

His areas of expertise are: Windows XP Professional, Windows 2003 Server, Visual Basic 6.0, C#.Net, VB.Net, MS-SQL Server 2000, 2005, Oracle 10g, MS-Access, HTML, ASP.Net, .Net Web Services, XML, JavaScript, MS Enterprise Library Configuration 2.0, VSS, Team Foundation Server 2005, Crystal Reports 9I, Infragistics Web Controls, Abby Form Reader 4.1, 6.5 and Microsoft Office Visio 2007.

The director issued a request for additional evidence ("RFE") instructing the petitioner to provide additional evidence to establish that the beneficiary would be employed in a capacity requiring specialized knowledge. Specifically, the director noted that the company's tools and methodologies, such as [REDACTED] and other software development processes, appear to be incidental to the duties of the U.S. position, while the

beneficiary's role appears to require him to possess knowledge specifically related to the client's system and procedures. Accordingly, the director requested: (1) a more detailed description of the claimed proprietary procedures used by the beneficiary, including a description of how the knowledge used by the beneficiary is not general knowledge, but is truly special or advanced, supported by examples, specific terminology, and documentary evidence; (2) an explanation of what the equipment, product, system, technique, research or service of which the beneficiary has specialized knowledge and whether it is used by other employers in the United States and abroad; (3) an explanation of how the beneficiary's specialized knowledge will be used on the project for [REDACTED] (4) an explanation of how the duties the beneficiary will perform in the United States are different from those of other workers employed by the petitioner or other U.S. employers in the same type of position; (5) evidence of training courses completed by the beneficiary since joining the petitioner's group of companies; and (6) information regarding the minimum amount of time required to train an employee to fill the proffered position, the number of workers who are similarly employed by the petitioner's organization, the number of workers who have received comparable training, and the number of employees who qualify as "specialized knowledge" workers.

In a letter submitted in response to the RFE, the petitioner emphasized that it reserves the L category for only a narrow subset of its workforce. The petitioner stated that it employs over 6,200 employees worldwide, including 1,235 in the United States, of which 227 are L nonimmigrants. The petitioner noted that the fact that only 4% of its workforce is in L nonimmigrant status "is the true measure of the key status of our L employees in the United States."

With respect to the beneficiary's duties and the purpose of his transfer, the petitioner stated:

[The beneficiary] is being transferred to the United States so that [the petitioner] may leverage his special knowledge of our manufacturing industry services and his advanced knowledge of our [REDACTED] methodology and the related processes and procedures we use to deliver our services to the manufacturing industry. [The beneficiary's] chief responsibility on the project is the implementation of our [REDACTED] methodologies and proven design and development processes and services. In order to accomplish the [REDACTED] implementation, he will analyze [REDACTED] requirements and the existing system to determine the precise needs of the client. He will then be responsible for tailoring [REDACTED] to meet the project needs and will map [REDACTED] to develop a specific project execution model. He will additionally be serving in the roles of Configuration Controller and Defect Prevention Controller responsible for preparing the configuration control plan and coordinating all of the audit activities of the project to limit project defects to zero. All other project activities are ancillary to these processes as they feed the [REDACTED] model and configuration of the software developed.

In this specialized role as [REDACTED] implementer, Configuration Controller and Defect Prevention Controller, he will be responsible for allocating tasks to software developers on the project and for training them on the [REDACTED] model.

The petitioner suggested that the director apparently misunderstood the nature of the beneficiary's specialized knowledge when he suggested that the beneficiary's knowledge relates to the client's business product and technical processes. The petitioner stated that the beneficiary's knowledge includes specialized knowledge of the company's services to the manufacturing industry, which he acquired and developed by working on five [REDACTED] projects. Specifically, the petitioner noted that "his knowledge is related directly to our services to the manufacturing industry and the processes, procedures and methodologies we use to deliver these services." The petitioner noted that the beneficiary's "knowledge of [REDACTED] system is, therefore, only incidental to the performance of his duties."

The petitioner emphasized that its service marked processes, such as [REDACTED] enable the company to install, maintain and support software projects with greater efficiency than its competitors. [REDACTED] is described as "a proprietary methodology which maps specific project execution models using a five phase development plan which ensures the effective conceptualization, design, development, implementation and support in accordance with [company] processes and procedures." The petitioner attributes its success and rapid growth to its specialized software solutions, processes, tools, methodologies, and delivery methods.

The petitioner reiterated that the beneficiary has been "formally trained" on Visual Studio, XML Web Services and Design Patterns during his tenure with the foreign entity, as well as "internally trained" in configuration control. The petitioner indicated that the minimum amount of time required to train a similar resource would be approximately 12 months. The petitioner emphasized that before one is able to effectively implement the [REDACTED] methodology, one must first have extensive knowledge of the company's processes for project initiation including requirements gathering, analysis and project planning.

With respect to the beneficiary, the petitioner noted that he has worked for the foreign entity and has been assigned as a software developer for five manufacturing industry projects. The petitioner stated that "within his first year at [the foreign entity], his technical skills and ability to acquire and apply [the company's] processes and procedures in an effective and efficient manner became apparent to his supervisors." The petitioner noted that the beneficiary received a "Best Performer" award and certificates of appreciation within a year after commencing employment, and therefore it took approximately 12 months for him to "develop and refine his specialized knowledge" in [REDACTED] implementation and associated processes.

The petitioner provided a list of other nonimmigrant employees currently assigned to the petitioner's U.S. team for the same [REDACTED]. According to the list there are four L-1B nonimmigrant employees serving as consultant, solutions architect, associate consultant and assistant manager. There are also four H-1B nonimmigrant workers assigned to the project, including two senior software engineers hired in April and December 2008.

Finally, the petitioner submitted a copy of its Master Relationship Agreement with [REDACTED] but did not include a statement of work for the specific project to which the beneficiary will be assigned. Under the agreement, [REDACTED] will license non-embedded software and related materials and/or documentation, and purchase professional services. The petitioner did submit a Services Addendum to the agreement, which includes hourly rates of pay

for different categories of workers, as well as a document which outlines the minimum education, experience and skills expected of consultants under the terms of the agreement.

The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director acknowledged the petitioner's assertion that only four percent of its worldwide workforce is comprised of L nonimmigrant employees, but noted that the petitioner failed to respond to specific inquiries regarding the number of employers who are similarly employed or have received similar training compared to the beneficiary. As such, the director noted that USCIS is unable to discern whether the beneficiary's knowledge is common among software engineers.

The director further observed that, although the petitioner indicates that the beneficiary's familiarity with the petitioner's proprietary methodologies such as [REDACTED] form the basis of his specialized knowledge, the beneficiary completed no formal training in such tools, and the petitioner provided no evidence as to how the beneficiary's knowledge of these tools sets him apart from other similarly trained professionals in his field. In this regard, the director noted that the petitioner had not established that its tools, methodologies and procedures for delivering solutions to clients differ significantly from those used by other companies providing similar information technology services. Therefore, the director concluded that knowledge of the petitioner's processes, procedures and methodologies alone does not constitute specialized knowledge.

The director advised the petitioner that the matter was being certified to the AAO and that the petitioner could submit a brief or written statement to the AAO within 30 days. As of this date, the AAO has not received a brief.

#### B. Analysis

Upon review, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or 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 for the L-1B visa classification, the petitioner must show that the individual has been and 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. 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.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

In examining the specialized knowledge of the beneficiary, USCIS 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. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge, or that the position requires such knowledge, will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The director's decision will be affirmed as it relates to this issue and the petition will be denied.

The petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary possesses specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity as evidenced by his selection for transfer to the United States, the petitioner has not adequately articulated or documented sufficient basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced software engineers employed by the petitioning organization or in the industry at-large. The petitioner failed to articulate, with specificity, the nature of the claimed specialized

knowledge beyond claiming that the beneficiary possesses advanced knowledge of proprietary delivery processes and methodologies such as [REDACTED], and special knowledge of its services to the manufacturing industry. 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).

The foreign entity's experience certificate provided a more detailed account of the beneficiary's acquired skills and experience. The certificate indicates that the beneficiary's duties as a senior software engineer have included requirements gathering and analysis, and designing and executing projects using Microsoft technologies such as ASP.Net, C#, .Net Web Services, Windows Services, XML, Oracle and SQL. In addition, the experience certificate indicate indicates that the "significant assignments which led to his selection for transfer to the United States included developing the Interface system using ASP.NET, C#, XML processor and .Net web services." Finally, the experience certificate indicates that the beneficiary is considered a "Subject Matter Expert' in Sales Domain of a Leading Computer Manufacturing Client." Other areas of experience mentioned in the letter are Windows XP Professional, Windows 2003 Server, Visual Basic 6.0, MS-Access, HTML, Javascript, MS Enterprise, VSS, Team Foundation Server 2005, Crystal Reports and Microsoft Office Visio. Based on these statements, it is reasonable to conclude that the beneficiary possesses knowledge and experience with technologies which are common and must be considered general in the information technology industry, and expertise with a client's sales domain. Notably, the experience certificate makes no mention of [REDACTED] or any references at all to company processes or methodologies, which, according to the petitioner, form the primary basis of the beneficiary's claimed specialized knowledge.

The petitioner claims that the beneficiary's knowledge is derived from a combination of his general software knowledge, his "special understanding" of the company's services to the manufacturing industry, and his "advanced understanding" of the company's proprietary methodologies and tools, software design and development processes and business processes, which differentiate him from software professionals who have not worked for the petitioner's group of companies. As a preliminary matter, we note that the petitioner has not explained in any detail what makes the beneficiary's understanding of the manufacturing industry "special" or what specific services the petitioner provides to the manufacturing industry that would differentiate his functional knowledge of the industry from that possessed by any other IT consultant who has worked with manufacturing industry clients. The beneficiary's experience, as briefly described by the petitioner included designing a financial application, a module of a sales productivity tool, an invoicing solution, a web application and a web interface, and, according to the foreign entity, he performed his duties utilizing Microsoft and other technologies that are standard in the industry. The petitioner has not established how the beneficiary's familiarity with the IT needs of the manufacturing industry qualifies as specialized knowledge or contributes to his 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

One question before USCIS is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies constitutes specialized knowledge. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The petitioner states that the beneficiary's specialized knowledge is primarily comprised of his experience with proprietary tools and methodologies developed by the petitioner "to develop and deploy software solutions to clients in our target industries." While the petitioner has provided evidence that it has obtained service marks for several of its internal processes, and indicates that it has developed a proprietary tool, "The [redacted]" the petitioner claims specifically that the beneficiary's knowledge centers on [redacted]. In fact, at the time of filing, the petitioner indicated that, "since 2006, [the beneficiary] has been trained on our [redacted] methodologies to deliver [the company's] services to the manufacturing industry." The petitioner's initial description of the beneficiary's "significant assignments and project experience" in its initial letter contained no reference at all to the beneficiary's experience with [redacted].

The beneficiary appears to be well-versed in the petitioner's internal methodologies; however, the petitioner has not established how such knowledge qualifies as specialized or advanced under the statutory and regulatory definitions. The petitioner is an IT consulting company that develops customized software solutions for its clients and acknowledges that it has many competitors in this field. The petitioner emphasizes that its processes and methodologies are SEI-CMMI Level 5 certified, however, all IT consulting firms develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. It is also industry standard practice for such companies to seek SEI-CMMI assessment of their processes and methodologies. While the petitioner submitted a description of [redacted] the petitioner has not attempted to differentiate its methodologies, and instead relies on its own growth in terms of revenue and employees as evidence that its methodologies are successful.

Critically, the petitioner has not specified or documented the amount or type of training its technical staff members receive in the company's proprietary tools and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. 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.

At the time of filing, the petitioner stated that the beneficiary had been trained for two years in [redacted] methodologies, but the company later stated that the beneficiary's only company-provided training

has been in Visual Studio, XML Web Services, Design Patterns and configuration control. Similarly, the beneficiary has no documented company training in [REDACTED] but rather is claimed to have acquired the knowledge by working as a software developer on multiple projects over a period of 12 months. The petitioner has not provided a copy of the beneficiary's resume describing his specific project experience, nor did it mention [REDACTED] when describing his significant assignments overseas. Therefore, the petitioner has not established when or how the beneficiary gained his claimed expertise in these methodologies. Further, although requested by the director, the petitioner declined to respond to inquiries regarding the amount of training normally given to employees in these areas or the number of employees with similar experience. 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). This evidence is important because, based on the petitioner's description of its business activities, it is reasonable to believe that any employee involved in software development projects would be expected to follow the company's methodologies for delivering projects. As such, it is unclear how the beneficiary's specific software development assignments are considered particularly "significant" by the company, such that he is considered to have "uncommon" knowledge that lead to his selection for transfer to the United States.

The minimal evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's proprietary processes and methodologies. Further, although the petitioner asserts that it would take approximately 12 to 14 months to train another employee to perform the same duties, there is no indication that the beneficiary himself has not been fully performing the duties of a senior software engineer since the time he was hired by the foreign entity. The record contains no detailed descriptions of his past assignments to support the petitioner's claim that he has been assigned progressively responsible duties. It is, however, evident that the beneficiary has not received 12 to 14 months of training.

Based on the petitioner's representations, its internal project management and development processes and tools, while highly effective and valuable to the company, are customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the technical and functional background appropriate for the project to which they will be assigned. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

Finally, the record shows that the beneficiary has worked exclusively with the petitioner's client [REDACTED], since joining the petitioner's group nearly two years before the petition was filed. We acknowledge that any client project executed by the petitioning company or any other technology consulting 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 or projects, and the client-specific knowledge gained through such relationships, without more, is sufficient to establish that the employee has specialized knowledge.

All employees can be said to possess unique skills or experience to some degree. Moreover, any proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is

"specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. 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. The fact that other workers outside of the petitioning organization may not have very specific knowledge of the petitioner's client projects and project delivery practices is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply providing the details of the project to a similarly experienced software engineer with the applicable technical and functional expertise.

This conclusion is further supported by a review of the master services agreement between the petitioner and the client, [REDACTED]. The client has agreed that consultants providing services on behalf of the petitioning company must meet certain educational, technical and experience requirements, but none of these requirements relate to the petitioner's internal methodologies. In fact, the agreement suggests that the petitioner is free to utilize subcontractors to perform services for the client, so long as they possess a college degree and the requisite technical skills. For example, [REDACTED] requires that an application developer assigned to one of its projects possess at least two years of functional experience and three years in the IT industry, knowledge of software development process and methodologies (OOP and UML), knowledge of software development technologies and standards (J2EE/.Net), knowledge of at least one enterprise application server (IBM, Oracle or BEA), knowledge of programming languages (PL/SQL, C++, C#, Java, VB), knowledge of markup languages (HTML, UML), experience with application design and related tools, understanding of ER models and database technologies, and the ability to read and write English.

In addition, there are two other senior software engineers on the U.S.-based project team the beneficiary is coming to join who are recent hires with less than one year of experience with the company. The petitioner declined to respond to the director's request for an explanation as to how the duties the beneficiary will perform in the United States are different from those of other similarly-employed workers. Again, based on the evidence submitted, and absent the requested explanations from the petitioner, it appears that it is possible to perform the duties of a senior software engineer without extensive company experience or training.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced software engineer with consulting experience in the manufacturing industry, or that he has received special training in the petitioning company's products, methodologies or processes which would separate him from any other worker employed within the industry at-large.

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. Accordingly, the petition will be denied.

### III. L-1 Visa Reform Act

Assuming *arguendo* that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition. The director noted in his decision that "[a]s it appear that a majority of the beneficiary's purported specialized knowledge will hinge upon his gaining knowledge of [redacted] internal processes, the beneficiary is ineligible under Section 214(c)(2)(F)(ii) for classification as an L-1B intracompany transferee having specialized knowledge specific to the petitioning employer."

One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated U.S. employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <http://www.loc.gov/law/find/hearings/pdf/00122982476.pdf>, (accessed on June 26, 2013).

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *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).

If the petitioner fails to establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1).

As a threshold question in the analysis, USCIS must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. Section 214(c)(2)(F) of the Act. The petitioner indicated on the Form I-129 petition and in accompanying statements that the beneficiary will be employed at the [redacted] Texas facility of its client, [redacted]. In response to Question 13 on the Form I-129 Supplement L, the petitioner answered "Yes" when asked: "Will the beneficiary be stationed primarily offsite (at the worksite of an employer

other than the petitioner or its affiliate, subsidiary, or parent)?"

Based on these responses and statements, it appears that the beneficiary will be primarily employed as a consultant at the worksite of an unaffiliated employer, thereby triggering the provisions of the L-1 Visa Reform Act. The petitioner therefore must establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. The director determined that the petitioner would principally control and supervise the beneficiary at the client's worksite, but determined that the position does not require specialized knowledge specific to the petitioning employer.

Specifically, in denying the petition, the director concluded that the placement of the beneficiary at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. The director concluded that the beneficiary's purported specialized knowledge hinges primarily upon his knowledge of the client's internal processes. In reaching this conclusion, the director determined that the beneficiary's use of the petitioner's proprietary tools and methods "is merely incidental" to the proposed duties of the U.S. position, as the beneficiary would be primarily engaged to work on the client's systems. Upon review, the AAO will affirm the director's determination.

The petitioner must demonstrate in the first instance that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is *specific to the petitioning employer*. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.

The petitioner has not submitted a complete copy of the contract governing the work to be done by the beneficiary at the client's worksite. The petitioner has submitted a copy of its Master Relationship Agreement with the client, along with an On-Premise Site Security and Environmental, Health and Safety Addendum, an Information Security Schedule, a Services Addendum, a Rate Card for Resources, and a Consultant Skills Description. The petitioner did not, however, submit the Statement of Work for the project or engagement to which the beneficiary will be assigned. According to the Services Addendum, "Services provided under the Agreement shall be described in a mutually agreed Statement of Work ("SOW") signed by authorized representatives of Provider and [REDACTED]. Without this document, the petitioner has not documented the nature of the services to be provided with respect to the "Interface" project, nor has it established that completion of this project requires the assignment of employees who possess specialized knowledge of the systems, processes, tools or methodologies of the petitioning company.

The experience certificate provided by the foreign entity suggests that the beneficiary has been working on the off-shore component of this project. Specifically, the letter states that the beneficiary has developed "the interface system using ASP.NET, C#, XML processor and .Net web services," and, as discussed above, does

not mention any knowledge gained by the beneficiary that is specific to the petitioner's group of companies. A review of the Master Relationship Agreement further suggests that the client does not require the services of consultants who possess specialized knowledge specific to the petitioning company. The agreement specifies that the petitioner may use subcontractors to provide the agreed upon services to the client. In addition clause 7.11 indicates the following:

Nothing in this Agreement requires [REDACTED] to purchase from Provider any or all of its requirements for Software or Services that are the same or similar to the Deliverables provided hereunder. Provider will cooperate and work with [REDACTED] and any other providers that [REDACTED] may engage in connection with the provision of the Deliverables.

This provision suggests that the specific services and deliverables to be provided by the petitioner could very well be provided by another IT consulting company with similar capabilities, and that [REDACTED] has not agreed to purchase products or services that are specific to the petitioning company. Finally, as discussed above, the agreed "consultant skills descriptions" only refer to the education, functional, technical and general IT experience required for each type of resource assigned to the project, and make no reference to any process, product, service or methodology of the petitioning company.

Overall, the petitioner has not shown that any of the products or services to be supported or enhanced will require the application of the petitioner's own technologies beyond using the company's standard methodologies for project development and delivery. The evidence of record does not support a conclusion that the beneficiary will not be implementing, developing, maintaining, or supporting systems or software developed by the petitioning company, or providing a specialized service. It is for this reason that the director found that the beneficiary's use of the petitioner's internal tools and methodologies would be "incidental" to the assignment. The primary purpose of the assignment is for the beneficiary to support, enhance and modify the unaffiliated employer's internal systems.

It is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that primarily requires knowledge specific to the petitioner. Here, the petitioner has failed to provide corroborating evidence demonstrating that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

In conclusion, there is no evidence that the petitioner is providing the beneficiary's services in connection with the sale of any technology products or that the beneficiary's offsite employment requires any specialized knowledge specific to the petitioner's operations. Instead, the limited evidence in the record related to the nature of the contract indicates that the petitioner is providing general IT services to the unaffiliated employer. The fact that such services appear to be delivered on a "project" basis is insufficient to preclude a finding that such services essentially constitute "labor for hire."

Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, and the petition may not be approved.

#### IV. Conclusion

The petition will be denied 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 AAO will affirm the director's determination and deny the petition.

**ORDER:** The petition is denied.