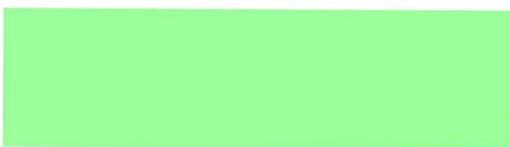


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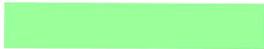
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

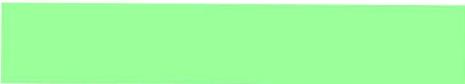


U.S. Citizenship
and Immigration
Services



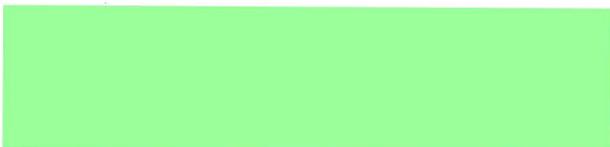
DATE: **JUL 23 2013** OFFICE: CALIFORNIA SERVICE CENTER

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", is written over a circular stamp.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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, a corporation organized in the State of California, is engaged in the provision of information technology consulting services. The petitioner stated that it is a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as a *software development engineer in test* for a period of two years.

The director denied the petition, concluding 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.¹

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 asserts that the director erred in concluding that the petitioner had failed to establish that the beneficiary acted in a specialized knowledge capacity with the foreign employer, and that he would act in a specialized knowledge role with the petitioner.

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.*

¹ The director also determined that the submitted evidence failed to establish that the beneficiary has been employed abroad in a capacity of a manager or executive. However, the petitioner did not attempt to qualify the beneficiary as a manager or executive consistent with the Act in the original I-129 Petition for a Nonimmigrant Worker or in any supporting documentation presented on the record. Further, the petitioner does not dispute the director's finding on appeal that the beneficiary does not qualify as a manager or executive. As such, analysis in this decision will be limited to whether the beneficiary acts in a specialized knowledge role with the foreign employer, whether the beneficiary possesses specialized knowledge and whether the beneficiary will act in a specialized knowledge capacity with the petitioner.

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 Issues on Appeal:

A. Specialized knowledge capacity with the foreign employer:

The first issue to be addressed is whether the petitioner established that the beneficiary has been employed aboard in a specialized knowledge capacity and thereby holds specialized knowledge.

The foreign employer is a Chinese information technology professional service company that provides consulting, solutions, application development, and business process outsourcing services to various financial services, telecommunications, pharmaceutical and manufacturing customers worldwide. The record states that the foreign employer has 4,853 employees in China alone, including additional presences in India, Singapore, Japan and the United States.

The petitioner stated the beneficiary currently works in the position of senior software development engineering tester. In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner offered the following explanation of the beneficiary's duties with the foreign employer and their specialized nature:

[The beneficiary] acquired experience and specialized knowledge through his employment at [the foreign employer] since 2009. He has been [sic] continuously served the Company as a SDET [senior software developer engineering tester] in many challenging areas, like Performance Testing, test framework design, mainly for the most influential software provider in the world by Microsoft.

As a Senior Software Developer Engineering Tester with a focus on system performance testing, [the beneficiary] has led and managed two major projects in China: Project [REDACTED] is special software developed to enhance the capability of System Center Configuration Manager 2012, to manage the more and more embedded devices. And [REDACTED] is designed for supporting the advertisement customer, who is the most important increasing power for Internet and Personal Computer Market.

The petitioner also detailed various technologies to which the beneficiary had been exposed during his employment with the foreign employer, including performance architecture, internal automation framework, and applications called [REDACTED] and .Net Framework. Further, the petitioner listed various Microsoft related projects the beneficiary worked on during his foreign employment and noted the beneficiary's promotion to a senior developer in May 2011 in order to manage the "Windows Embedded Device Management Team" that included ten other engineers. Lastly, the petitioner asserted that the beneficiary's current assignment, since May 2012, involved the beneficiary working as a software development engineering tester for the [REDACTED] team for which he exclusively conducted performance testing.

The director issued a Request for Evidence (RFE) stating that the petitioner's description of the beneficiary's foreign employment was insufficient to demonstrate that the position involved specialized knowledge, noting that she was unable to establish the beneficiary's place within the foreign employer's organizational hierarchy. The director also pointed out the petitioner's failure to compare the beneficiary's duties with other professionals performing similar work. The director offered evidence that the petitioner could submit to remedy the aforementioned insufficiencies, including *inter alia*: (1) a more detailed description of the beneficiary's duties abroad; (2) a specific explanation of how the beneficiary's knowledge was special or advanced and how such knowledge was different from other *software development engineers in test* employed

with the foreign employer or in the industry; and (3) a copy of the foreign employer's organizational chart specific to the beneficiary's immediate division, department or team listing all employees, their job titles, a summary of duties, educational levels and salaries. Further, in order to establish that the beneficiary held specialized knowledge, the director further suggested the petitioner might submit, *inter alia*: (1) a letter from the beneficiary's supervisor describing the beneficiary's training and experience with the organization aboard; (2) a detailed description (in layman's terms) of the specialized knowledge gained by the beneficiary through education training, and employment; (3) the number of employees aboard and in the United States that have acquired the same knowledge in the foreign employer's technology; (4) documentation supporting any training received by the beneficiary that involved specialized knowledge; (5) any knowledge of proprietary information possessed by the beneficiary that is specific to the foreign employer; or (6) copies of noteworthy material published by the beneficiary in a professional or trade publication. The director stressed that the aforementioned evidence was relevant to comparing and contrasting the beneficiary's knowledge against that of others within the industry, or the foreign employer, in order to establish the beneficiary's knowledge as uncommon, noteworthy, distinguished by unusual qualification, not known by practitioner's in the beneficiary's industry and/or advanced beyond a higher level than others within the field. The director also noted that if the United States Citizenship and Immigration Services (USCIS) was unable to understand the nature of the beneficiary's knowledge that it would be difficult to conclude that the knowledge possessed by the beneficiary was specialized.

In response, the petitioner provided a description of the beneficiary's duties aboard separated into the following general categories, denoting the percentage of time the beneficiary spent on each task:

- Define Test & Production Environment (10%)
- Acceptance Criteria (10%)
- Plan & Design Tests (15%)
- Configure Test Environments (10%)
- Implement Test Design (20%)
- Execute Tests (20%)
- Results Analysis, Reports, and Retest (15%)

Within each of the categories above, the petitioner provided technical details regarding each step and noted that the performance of each one of these tasks required specialized knowledge. The petitioner further stated that specialized knowledge of the foreign employer's testing tools and technologies was required to perform the duties, and indicated that the beneficiary was the only software developer, out of a team of more than 30 employees assigned to [REDACTED] testing, devoted to performance testing. The petitioner also provided various technical documents that outlined the details of [REDACTED] performance testing, and more specifically, performance testing on the [REDACTED] application in order to illustrate the complexity of the products and technology utilized by the beneficiary.

Additionally, the petitioner offered technical performance testing documents it stated were drafted by the beneficiary, including many specific to the aforementioned API application. The petitioner also noted that the

beneficiary received two months of training on [REDACTED] and three months of training on another application called Windows Communication Foundation directly from Microsoft. Lastly, the petitioner submitted an updated organizational chart for the foreign employer, including the beneficiary's place therein. However, the petitioner provided only the names and positions of the beneficiary's six subordinates, and his supervisor, and failed to provide duty descriptions, educational levels and salaries for the members of the beneficiary's department.

The director ultimately denied the petition, concluding that the petitioner had failed to establish that the beneficiary was employed in a specialized knowledge position with the foreign employer or that the beneficiary possessed specialized knowledge. The director reasoned that the beneficiary's duties were similar to those listed for a Software Quality Assurance Analyst in the Department of Labor's Occupational Outlook Handbook (OOH), and therefore, were not established as sufficiently special or advanced. The director further noted that the petitioner had submitted insufficient evidence to establish that the beneficiary's knowledge is special or advanced in comparison to other similarly experienced professionals in the same occupation.

On appeal, counsel asserts that the director erred in concluding that the beneficiary does not work in a specialized knowledge role with the foreign employer and that he does not hold specialized knowledge. Counsel states that the director provided an insufficiently narrow interpretation of the beneficiary's job duties with the foreign employer and failed to appropriately consider the specific projects to which the beneficiary was assigned. In support of the appeal, counsel submits an additional support letter from the Senior Vice President of the petitioner which outlines the complexity of performance testing and the beneficiary's duties. Also, counsel resubmits technical documentation outlining the technical specifics and complex nature of performance testing.

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that has been employed with the foreign employer in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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 order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). 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. In the present case, the petitioner's claims are based on both prongs of the statutory definition, asserting that the beneficiary has special knowledge of the company's products and their application in international markets and an advanced level of knowledge of the company's processes and procedures.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner has not provided sufficient supporting documentation to determine whether the beneficiary holds specialized knowledge of the company's products and their application in international markets or that he has an advanced knowledge of the company's processes or procedures. The petitioner has submitted sufficient evidence to establish that performance testing, and the related technologies on which the beneficiary focuses, are complex. But, complexity alone does not establish knowledge as specialized, as any professional in a technical field might otherwise qualify as holding specialized knowledge. As noted above, a comparison of a beneficiary's knowledge against that of others within the petitioning company or others holding comparable positions within the industry is critical to determining whether such knowledge is special or advanced. Indeed, the director was well aware of the importance of this analysis when she suggested the petitioner submit evidence relevant to comparing and contrasting the beneficiary's knowledge against that of others within the industry, or the foreign employer. Such evidence may establish the beneficiary's knowledge as uncommon, noteworthy, distinguished by unusual qualification, not known by practitioner's in the beneficiary's industry and/or advanced beyond a higher level than others within the field.

However, the petitioner did not provide sufficient explanations and supporting documentation to compare the beneficiary's knowledge to that of his peers within, and outside, the foreign employer as necessary to distinguish such knowledge as uncommon. For instance, the petitioner did not sufficiently explain, and document, how the beneficiary's knowledge was different from other *software development engineers in test* employed with the foreign employer or in similar positions within the industry. Indeed, the petitioner notes on the record that the foreign employer took over Bing Ad API performance testing from another vendor.

Further, the petitioner did not provide a summary of job duties, educational levels or salaries for the beneficiary's subordinates or supervisors as suggested by the director. This failure of documentation is important as this information would have been particularly probative by allowing a direct comparison between the stated knowledge of the beneficiary and his peers. Although the petitioner noted that the

beneficiary was the only employee out of thirty software engineers focused on performance testing for Microsoft's [REDACTED] application, the petitioner does not provide supporting documentation to corroborate this statement. In fact, the record suggests that other employees with the foreign employer perform similar performance testing duties as the beneficiary is offered as having five subordinate software developers in testing. As noted, without a specific explanation of the duties and credentials of the beneficiary's subordinates, the petitioner has not credibly established the unique nature of the beneficiary's knowledge. Also, the petitioner submits a technical guidebook titled "Performance Testing Guidance for Microsoft Web Applications," suggesting that performance testing is a common practice on Microsoft products. Additionally, the petitioner asserts that the beneficiary took exclusive training with Microsoft to establish knowledge in Ads Core, Bing and Windows Communication Foundation, but provides no documentation to support the completion of this training. 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)). 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 has also not provided adequate explanations of the technical aspects of the beneficiary's knowledge to understand whether such knowledge qualifies as special. In the present matter, the petitioner submitted a number of technical documents and language on the record without explaining their relevancy to establishing the beneficiary's knowledge as specialized. The director noted that if USCIS was unable to understand the nature of the beneficiary's knowledge it would be difficult to conclude that the knowledge possessed by the beneficiary was specialized. The petitioner only generally offers the various technical documents without noting their relevancy, offering them as proof that the beneficiary's duties are complex. However, as noted, the AAO does not dispute that the work of the beneficiary is complex. In fact, the many technical documents submitted by the petitioner are so complex that the petitioner's failure to explain the relevancy of these documents leaves much of the evidence on the record with limited probative value. A petitioner cannot meet the burden of establishing specialized knowledge simply through submitting various technical documents which demonstrate the complexity of a beneficiary's field.

Lastly, in order to establish specialized knowledge consistent with the Act, a beneficiary must be shown to hold either specialized knowledge of the company's products and their application in international markets or advanced knowledge of the company's processes or procedures. However, despite the direct request of the director in the RFE, the petitioner has not explained with specificity what, if any, of the knowledge of the beneficiary is unique to the foreign employer. The record notes that another vendor previously conducted performance testing for the Bing Ads application prior to the beneficiary being assigned to the project, suggesting that the beneficiary merely has access to widely held knowledge of Microsoft applications. No evidence on the record establishes that the foreign employer holds products, processes, or procedures unique to the company, or that the beneficiary holds an advanced level of knowledge of any company specific processes or procedures or their application in international markets.

For the reasons discussed above, the petitioner has not established that the beneficiary possesses specialized knowledge and has been employed abroad in a specialized knowledge capacity. For this reason, the appeal must be dismissed.

B. Specialized knowledge capacity with the petitioner:

The next issue to discuss is whether the petitioner has established that the beneficiary will be employed in the U.S. in a specialized knowledge capacity. As noted, the director concluded that the beneficiary's proposed position with the petitioner did not involve specialized knowledge.

The petitioner is asserted as being a wholly owned subsidiary of the foreign employer and is similarly engaged in providing information technology consulting, solutions, and other related professional services in the United States. The record indicates that the petitioner has approximately 168 employees in the United States and that it accrued approximately \$3.4 million in revenue in 2011.

The petitioner stated the beneficiary would take on the position of *senior software development engineer in test* with the petitioner, leading the Microsoft Ads API test project being transferred to the foreign employer's United States office. The petitioner explained the beneficiary's role in the United States as follows:

Microsoft Advertiser platform is the largest product on the advertisement market by Microsoft. [REDACTED] are oriented to the top customers like [REDACTED] and so on, who need a customized management on their large amount of advertisement. The [REDACTED] is the infrastructure of the entire Advertiser product. [The beneficiary] will take the whole automation test plan and is the only person in [the foreign employer and the petitioner], to take the performance test design. [The beneficiary's] exclusive knowledge is vital for the project. [The beneficiary] is the best candidate in [the foreign employer] to take this responsibility due to his unique knowledge, and his experience in performance test and automation framework.

The director issued a Request for Evidence (RFE) stating that the petitioner's description of the beneficiary's foreign employment was insufficient to demonstrate that the position involved specialized knowledge. The director noted the petitioner's failure to explain the beneficiary's role in layman's terms and to compare the beneficiary's U.S. duties with other employees in the organization as necessary to establish the beneficiary's role as special or advanced. The director suggested evidence that the petitioner could submit to establish the beneficiary's role with the petitioner as specialized, including *inter alia*: (1) a more detailed description of the beneficiary's duties in the United States; (2) explanation of how the beneficiary's duties in the United States would involve an advanced level of knowledge of the company's equipment, systems, products, techniques, or services, and/or their application into international markets; (3) training the beneficiary will be providing pursuant to his role with the petitioner, if applicable; and (4) an updated organizational chart for the petitioner specifying the employees within the beneficiary's immediate division, department or team, including names, job titles, and their immigration status. The director also noted that if USCIS was unable to understand the

nature of the beneficiary's knowledge it would be difficult to conclude that the knowledge to be applied by the beneficiary was specialized.

In response, the petitioner provided a description of the beneficiary's duties in the U.S. separated into the following general categories, denoting the percentage of time the beneficiary spent on each task:

- Define Test & Production Environment (10%)
- Acceptance Criteria (10%)
- Plan & Design Tests (15%)
- Configure Test Environments (10%)
- Implement Test Design (20%)
- Execute Tests (20%)
- Results Analysis, Reports, and Retest (15%)

The petitioner noted the beneficiary's duties in the U.S. would be "very similar" to his duties aboard. Within each of the categories above, the petitioner provided technical details regarding each step and noted that the performance of each one of these tasks required specialized knowledge. Additionally, the petitioner states that the beneficiary will provide technical training and practical application of performance testing techniques to other members of the project team. Further, the petitioner submitted an updated organizational chart for the petitioner, including the beneficiary's place therein. However, the petitioner provided only the names and positions of the beneficiary's supervisor, and two other higher level managers above the beneficiary's supervisors, and did not provide additional information on any other comparable members of the beneficiary's department.

The director concluded that the petitioner had failed to establish that the beneficiary will be employed in a specialized knowledge position with the petitioner. The director again reasoned that the beneficiary's duties were similar to those listed for a Software Quality Assurance Analyst in the Department of Labor's Occupational Outlook Handbook (OOH), and therefore, that his knowledge was not established as sufficiently special or advanced. The director found that the petitioner had submitted insufficient evidence to establish that the beneficiary's knowledge is special or advanced in comparison to other similarly experienced professionals in the same occupation.

On appeal, counsel asserts that the director erred in concluding that the beneficiary would not work in a specialized knowledge role with the petitioner. Counsel states that the director provided an insufficiently narrow interpretation of the beneficiary's job duties with the petitioner and failed to appropriately consider the specific projects of the beneficiary with the foreign employer. In support of the appeal, counsel submits an additional support letter from the Senior Vice President of the petitioner which outlines the complexity of the beneficiary's performance testing duties with the petitioner. Also, counsel resubmits technical documentation outlining the specifics and complex nature of performance testing.

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the

beneficiary will act in a specialized knowledge capacity with the petitioner as defined by 8 C.F.R. § 214.2(l)(1)(ii)(D).

As stated above, 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. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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.

As previously stated, in order to establish eligibility, the petitioner must show that the beneficiary will be employed in an executive, managerial, or 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. In the present case, the petitioner's claims are based on both prongs of the statutory definition, asserting that the beneficiary has special knowledge of the company's products and their application in international markets and an advanced level of knowledge of the company's processes and procedures.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner has not provided sufficient supporting documentation to determine whether the beneficiary will act in a specialized knowledge role with the petitioner. As previously found in this decision, the petitioner did not submit sufficient evidence to establish that the beneficiary worked in a specialized knowledge capacity with the foreign employer or that he possessed specialized knowledge. As such, it is difficult to now conclude that the beneficiary's role with the petitioner will involve specialized knowledge. Again, petitioner has submitted sufficient evidence to establish that performance testing, and the related technologies, are complex. But, complexity alone does not establish knowledge as specialized, as any professional in a technical field might otherwise qualify as holding specialized knowledge. As noted, a comparison of a beneficiary's knowledge against that of others within the petitioning company or others holding comparable positions within the industry is critical to determining whether such knowledge is special

or advanced. Indeed, the director was well aware of the importance of this analysis when she suggested the petitioner submit evidence relevant to comparing and contrasting the beneficiary's knowledge against that of others within the industry, or the petitioner, necessary to establish the beneficiary's knowledge as uncommon, noteworthy, distinguished by unusual qualification, not known by practitioner's in the beneficiary's industry and/or advanced beyond a higher level than others within the field.

However, the petitioner submitted insufficient explanation and supporting documentation to compare the beneficiary's knowledge to that of his peers within, and outside, the petitioner as necessary to distinguish such knowledge as uncommon. For instance, the petitioner did not sufficiently explain, and document, how the beneficiary's knowledge was different from other *software development engineers in test* employed with the petitioner. Indeed, although the petitioner states the beneficiary will be providing training for other software developers on performance testing techniques, no other software developers working for the petitioner are identified. Further, no other evidence or documentation is provided to confirm that the beneficiary will be conducting training for other software developers employed by 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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).

As previously stated herein, in order to establish specialized knowledge consistent with the Act, a beneficiary must be shown to hold either specialized knowledge of the company's products and their application in international markets or advanced knowledge of the company's processes or procedures. However, despite the direct request of the director in the RFE, the petitioner has not explained with specificity what, if any, of the knowledge of the beneficiary is unique to the foreign employer or petitioner. The record notes that another vendor previously conducted performance testing for the Bing Ads application prior to the beneficiary being assigned to the project, suggesting that the beneficiary merely has access to widely held knowledge of Microsoft applications. No evidence on the record establishes that the foreign employer or petitioner holds products, processes, or procedures unique to the company, or that the beneficiary holds an advanced level of knowledge of any company specific processes or procedures or their application in international markets.

For the reasons above, the evidence fails to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity in the U.S. For this additional reason, the appeal must be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

(b)(6)

NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed.