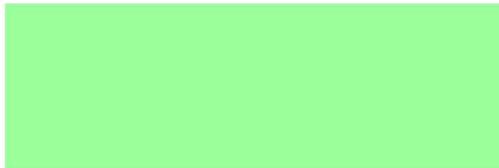




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 25 2013** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition to classify the beneficiary as an L-1B 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 is a software development, consulting and systems integration company that was incorporated in Michigan in 2012. The petitioner states that it is an affiliate of [REDACTED] located in Italy. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a senior consultant in a new office in the United States.

The director denied the petition, concluding that the record was insufficient to establish that: (1) the beneficiary's employment abroad was in a position involving specialized knowledge, (2) that the beneficiary possessed specialized knowledge, and (3) that the beneficiary's proposed position in the U.S. involved specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel states that the beneficiary holds advanced knowledge of the petitioner's technology, processes, and procedures and is one of only a few holding such knowledge within the company. Therefore, counsel asserts that the beneficiary is established as working in a specialized knowledge capacity abroad and that the beneficiary will also work in such a capacity in the United States.

### I. The Law

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

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

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

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

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.

The regulation at 8 C.F.R. § 214.2(l)(3)(vi) further provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a "new office" in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

## 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 for one year with the foreign employer in a specialized knowledge capacity and whether she holds specialized knowledge as a result of her foreign employment.

The petitioner states that the foreign employer is a wholly owned subsidiary of an Italian company [REDACTED] that is engaged in creating and implementing specific processes, applications, and technologies based on new communications networks and digital media. The petitioner asserts that [REDACTED] employs over 3,400 people worldwide in various subsidiary and affiliate companies operating in countries throughout the world including all major European countries, Australia, Brazil and the United States. The beneficiary works aboard for a wholly owned subsidiary of [REDACTED] called [REDACTED] (hereinafter "the foreign employer") that specifically focuses on the development of technological applications relevant to supply chain management. The petitioner stated that the foreign employer is headquartered in Milan, Italy, currently employs 115 professional employees, and that it had an operational budget of \$16.1 million in 2011. The petitioner further asserts that a primary driver of revenue for the foreign employer is its proprietary solution [REDACTED] which supports a client's entire supply chain process by integrating inventories, warehousing and shop floor management. The petitioner also noted that [REDACTED] is installed at more than 300 businesses and has over 12,000 users worldwide.

In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner stated the following with respect to the beneficiary's experience with the foreign employer:

[The beneficiary] joined [REDACTED] at [REDACTED] in July 2000 as a Systems Developer. In the 12 years that she has been with the group, she has become an expert in [REDACTED] warehouse management system called [REDACTED]. Today, [REDACTED] is in its 4<sup>th</sup> version, and [the beneficiary] has worked on the development of [REDACTED] since 2000 when it was in version 2.1. In 2001, after [REDACTED] changed its name to the [foreign employer], [the beneficiary] continued working on developing applications for the Supply Chain line of products. She has extensive experience and knowledge of [REDACTED]. In addition, due to her highly advanced knowledge of the product, she is able to efficiently and effectively serve the needs and expectations of [REDACTED] customers and to work with them towards customizing the product to fit their needs.

Additionally, the petitioner listed the following duties for the beneficiary in her capacity with the foreign employer:

- Support and perform functional analysis with the customer and transmit internally for development.
- Train resources (internal and external) on [REDACTED].
- Train internal resources on Oracle DBMS and PLS/SQL language for [REDACTED] development.
- Lead rollout teams for launch and implementation.
- Set up and parameterize [REDACTED] application.

- Develop customization for [REDACTED]
- Estimate change requests for [REDACTED]
- Plan developments, tests and releases, draw guidelines for solution upgrades.
- Manage resources, plan and verify their activities on small projects.
- Meet customers –business and ICT- to plan and propose activities related to [REDACTED]

The petitioner also provided a resume for the beneficiary that noted her involvement with approximately 25 projects throughout the world involving the installation and customization of [REDACTED] for clients. The petitioner further provided evidence that the beneficiary earned a scientific high school diploma through completion of Italian state required exams in 1989, completed various courses at the [REDACTED] from 1990 through 1997, and completed a course called “Phase 1- Team Management” at [REDACTED]

The director found the initial evidence submitted by the petitioner insufficient to establish that the beneficiary acted in a specialized knowledge capacity with the foreign employer or that the beneficiary held specialized knowledge. Consequently, the director issued a request for additional evidence (RFE) listing evidence the petitioner could submit to establish that the beneficiary works in a specialized knowledge capacity abroad, including *inter alia*: (1) a more detailed description of the beneficiary’s duties abroad including the percentage of time required to perform her duties, an indication of why others in the company have not acquired the asserted special or advanced knowledge, and an explanation of how the beneficiary’s knowledge is different from others employed by the foreign employer or others in similar positions in the industry; and (2) a copy of the foreign employer’s organizational chart relevant only to the beneficiary’s immediate hierarchy, including a listing of all employees in the beneficiary’s immediate division or department, their names, job titles, duties, educational levels and salaries. The director also requested that the petitioner should submit additional evidence related to establishing that the beneficiary holds specialized knowledge, including: (1) a letter from the beneficiary’s supervisor describing the beneficiary’s training or experience with the organization abroad; (2) an explanation, in layman’s terms, of the specialized knowledge gained by the beneficiary through education, training and employment; (3) the total number of employees abroad and in the U.S. that acquired the same knowledge as the beneficiary, and an explanation of how the beneficiary’s knowledge is special or advanced and set apart from those working in similar positions within the petitioner’s organization and other employers in the same type of business; (4) job descriptions of those persons employed at the foreign and U.S. location who have the same position as the beneficiary; (5) documentation that shows any specialized knowledge gained through specific training courses presented by the petitioner; (6) a detailed comparison of company proprietary knowledge the beneficiary holds, if applicable, to others in the industry and whether the beneficiary was involved in the design or development of any of the petitioner’s tool, services, processes or procedures; and (7) information on any patents or published materials for which the beneficiary is responsible.

In response, the petitioner provided an additional support letter from the foreign employer which included the following description of the beneficiary’s duties aboard and their asserted specialized nature:

The position of Senior Consultant in Italy involves unique specialized technical knowledge that is only acquired by working with [REDACTED] over time. This experience is essential to [the petitioner], and it involves the transference of the particular skills and detailed knowledge involved in [the beneficiary's] primary duties [with the foreign employer] in Italy. Her primary duties in Italy are sophisticated in nature and include the following:

- (1) Cross-competencies combining the execution of logistics with software system integration. Combine different Reply proprietary software modules like core database engine, web interface, mobile devices application service and electronic data interchange application service in order to integrate them with the customer's systems and come up with a customizable layer of software that fits the customer's unique situation. [The beneficiary's] combined knowledge of the product and the customer's processes enables her to lead projects and to manage customer relationship. (Percentage of time devoted to activity 30%)
- (2) Competencies of logistics and material handling (business aspect). Review and improve logistic workflows using special knowledge of the product. Combined experiences acquired in different business sectors (automotive, electronics, appliances, grocery) with customer scenarios are essential in order to identify processes gaps and draw new solutions. [The beneficiary] leads the analysis of the business requirements in order to manage the setup of the [REDACTED] and to cover customer needs. (Percentage of time devoted to activity 40%)
- (3) Competencies of software development and knowledge of the product. Determine the business requirements producing adequate software requirements, then lead the development team to concretize these requirements in software improvements. [The beneficiary's] past experience in the development phase of [REDACTED] and her deep knowledge of the software product give her the possibility to indicate precise guidelines and effectively monitor development progress and conduct the testing phases for the internal tests and customer's acceptance. (Percentage of time devoted to activity 30%)

The foreign employer also noted that consultants within their company are set apart from those in the marketplace due to their proprietary knowledge of [REDACTED]. The foreign employer also noted that the beneficiary is set apart based on her familiarity with the product and its customization, and through her role as a team leader. The petitioner specified that in order for an employee to hold sufficient training with respect to [REDACTED] and work independently as a senior consultant that they would need to work on customer projects in similar industrial logistics for 5-6 years with an additional year working intensively as part of [REDACTED] team on projects. The petitioner noted that out of 3,500 employees in the entire company and 88 within the subsidiary foreign employer that "only a few" share the specialized knowledge of the beneficiary due to her involvement with the design and development of the product since 2000.

As suggested by the director, the petitioner also provided an organizational chart specific to the beneficiary's department within the foreign employer. The chart listed one senior manager, the product line manager- spare

parts, three other senior consultants other than the beneficiary, and a pool of eight consultants from which senior consultants draw upon for various client projects. However, as was also suggested by the director, the petitioner did not provide information on the duties and educational levels of the beneficiary's colleagues. Further, the petitioner did not clarify exactly how many other foreign employer employees hold knowledge comparable to the beneficiary.

The petitioner did submit a letter from the beneficiary's supervisor noting that the beneficiary is "at the top of her field" and that her knowledge of the foreign employer's product is "unsurpassed." The beneficiary's supervisor again affirmed the beneficiary's involvement with the development of [REDACTED] since the early 2000's and her expertise in analyzing different logistics market segments such as automotive and electronic consumer goods. The petitioner also provided a press release from 2011 indicating that the foreign employer was the 4<sup>th</sup> ranked provider of warehouse management systems (WMS) in a top 10 of suppliers ranked by ARC Advisory Group. Additionally, the petitioner provided a warehouse management system directory of other companies providing similar WMS software listing 92 other companies providing this technology worldwide.

The director ultimately denied the petition, concluding that the petitioner had failed to establish that the beneficiary is employed in a specialized knowledge position with the foreign employer or that the beneficiary possesses specialized knowledge. The director reasoned that the beneficiary's duties were similar to those listed for a senior developer, and similar occupations, within 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 and field.

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 she does not hold specialized knowledge. Counsel states that the beneficiary is one of only a handful of employees, out of 3,500 employees in [REDACTED] greater corporate structure, that can claim such an advanced level of knowledge in the petitioner's Click [REDACTED] software. Counsel asserts that the beneficiary's knowledge is not commonly found in the industry and that an average, or even experienced, computer technologist or analyst would not be able to effectively work on the petitioner's [REDACTED] software without the beneficiary's specialized knowledge. Counsel states that it would take a year to train another professional on the petitioner's systems and products, and another five to six years for that employee to reach senior consultant status. Counsel also indicates the beneficiary's extensive experience in implementing [REDACTED] software in many different companies in various countries, including Germany, the United Kingdom, and the Netherlands. In short, counsel asserts that the petitioner is established as acting in a specialized knowledge role with the foreign employer and as holding specialized knowledge.

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that she is 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 the 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 she has an advanced knowledge of the company's processes or procedures. The petitioner notes that the foreign employer's business model is built around the [REDACTED] application and that it has been installed in over 300 businesses and has over 12,000 users. Although the petitioner has not clarified the number of clients who specifically use [REDACTED] the AAO concludes that this is also extensive due to the 25 [REDACTED] installation projects the beneficiary worked on over the last 12 years. Additionally, the petitioner has identified 92 other companies that provide warehouse management software worldwide. Therefore, due to the extensive use of warehouse management software, a specific 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 that the petitioner submit evidence relevant to differentiating the beneficiary's knowledge against from others within the company or the industry.

However, the petitioner did not provide sufficient explanation and supporting documentation necessary to compare the beneficiary's knowledge to that of her peers within, and outside, the foreign employer. For instance, the petitioner did not sufficiently explain, and document, how the beneficiary's knowledge was different from other senior consultants within the foreign employer or senior consultants within the industry working in similar positions. Indeed, the petitioner notes in its 2013-2017 business plan that the petitioner plans on hiring a functional analyst with strong expertise in WMS to work with a key client and pass along critical knowledge. Also, the beneficiary's resume reflects that she began working on projects related to the implementation of [REDACTED] within one year of beginning employment with the foreign employer. As such, evidence on the record suggests that knowledge of warehouse management software is widely available in the industry and can be readily attained.

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 particularly important as this evidence would have allowed a direct comparison between the stated knowledge of the beneficiary and her peers. The organizational chart provided in support of the I-129 Petition for a Nonimmigrant Worker indicates that there are nine other senior consultants within the foreign employer's organization and nine other employees senior to the beneficiary. However, the petitioner only vaguely states that the beneficiary is "one of only a handful" with such advanced knowledge of the [REDACTED] application, but does not specifically identify an exact number of employees (as suggested by the director) or specifically contrast these employees against other consultants within the company. In fact, the record suggests that other employees within the foreign employer perform similar duties related to [REDACTED] since the beneficiary is offered as working on approximately 25 projects over a 12 year period on teams installing [REDACTED] for clients. Given the essential nature of this product to the foreign employer's operations, the AAO finds it likely that this product has been installed various times outside of the beneficiary's direct involvement and that other members of the beneficiary's immediate team have acquired intimate knowledge of the product during these installations. Also, although the petitioner notes that the beneficiary completed a course titled "Phase 1- Team Management" at [REDACTED], it does not explain the significance of this course and how it differentiates the beneficiary from her colleagues. 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).

Furthermore, the petitioner has not submitted sufficient evidence to establish that the beneficiary was involved in the development of the [REDACTED] application. Although establishing that a beneficiary developed a proprietary process or product is not determinative of demonstrating specialized knowledge, it can act as compelling evidence of a beneficiary's specialized knowledge. In the current matter, the petitioner consistently states throughout the record that the beneficiary was involved in the development of the application, but fails to submit documentary evidence to support this assertion. For instance, the director suggested the submittal of patents for which the beneficiary was responsible or published materials the beneficiary drafted. While the creation of patents or the drafting of published materials are not required to

establish specialized knowledge, the petitioner has not submitted other evidence beyond its assertions to demonstrate that the beneficiary played a primary role in the development of [REDACTED]. In fact, given that the record suggests that many other employees and teams have been engaged with the [REDACTED], the AAO finds that it is more likely, given the evidence presented, that many different professionals have contributed to the development of the product. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Based on the foregoing, the petitioner has not demonstrated that the beneficiary's knowledge is sufficiently special or advanced.

Therefore, the petitioner has not established that the beneficiary possesses specialized knowledge or that he is employed with the foreign employer 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 act in a specialized knowledge capacity with the petitioner. As noted, the director concluded that the beneficiary's proposed position with the petitioner would not involve specialized knowledge.

The petitioner states that it is an affiliate of the foreign employer and formed in Michigan in June 2012 to expand [REDACTED] products and services into the U.S. market. The petitioner states that it began operations in September 2012 and that it plans on hiring seven employees in the first year of operation and fifteen additional employees in the next two years as necessary to provide services to companies with operations in the United States such as [REDACTED]. The petitioner notes that current contracts currently fulfilled by foreign entities within the company structure have been transferred to the petitioner.

Pursuant to this transfer of contracts, the petitioner stated that the beneficiary will also be transferred to the United States as a senior consultant in order to provide services to the U.S. based client [REDACTED]. In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner explained the beneficiary's prospective duties in the United States as follows:

When transferred to [the petitioner], [the beneficiary's] overall responsibilities in the United States will be to analyze the functionalities of WMS projects, to support and perform functional analysis with the customer [REDACTED] and transmit this analysis internally for development; train internal resource staff on Oracle DBMS and PLS/SQL languages; set up and parameterize [REDACTED] application; develop customization for [REDACTED]; estimate change requests on [REDACTED] plan development; tests and releases; draw guidelines for solution upgrades; and meet with customers' business and ICT personnel to plan and propose activities related to [REDACTED]. Due to her highly advanced knowledge of the product, she will train resource people (internal and external) on the [REDACTED] solution, and to lead roll-out teams during launch and implementation.

The director issued a Request for Evidence (RFE) stating that the petitioner's description of the beneficiary's U.S. employment was insufficient to demonstrate that the position involved specialized knowledge. The director emphasized the petitioner's failure to compare and contrast the beneficiary with those performing similar work both within, and outside, the company's organization. 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 including an indication of the minimum amount of time in training and experience required to perform the duties; (2) an indication of what about the duties make them special or advanced; (3) an explanation of how the beneficiary's duties are different from other workers employed by the petitioner or other U.S. employers in the same type of position; (4) a detailed description of any training the beneficiary will provide to other workers in the United States including the amount of time required to train these employees and an itinerary of this training; and (5) a copy of the petitioner's organization chart relevant to the beneficiary's immediate department including the names, titles, and immigration statuses of the employees in the organization and subordinates to the beneficiary.

In response, the petitioner provided the following description of the beneficiary's specialized role with the petitioner, including duties to be performed while transferred to the United States:

[The beneficiary's] special knowledge of the product and the processes is central to the US position, as [the] beneficiary must be capable of evaluating the cost of the requirements and the changes as per customer's needs. Other duties [the beneficiary] will perform include to analyze the functionalities of WMS projects for North America ... to support and perform functional analysis with customer [REDACTED] and transmit this analysis internally for development – follow the rollout of the [REDACTED] system in the 11 spare parts warehouses of CHN all over the USA with the following activities: team leading, cutover preparation, data loading, profiles setup, warehouse HW infrastructure configuration and functionalities check, key-user training; train internal resource staff on Oracle DBMS and PLS/SQL languages, set up and parameterize [REDACTED] application; develop customization for [REDACTED] estimate change requests on [REDACTED] plan development, tests and releases; draw guidelines for solution upgrades; and meet with customers' business and ICT personnel to plan and propose activities related to [REDACTED].

The petitioner further noted in a support letter that the beneficiary would conduct training on [REDACTED] programs and methods with U.S. employees that would take approximately six months. Further, the petitioner stated that basic knowledge transfer of the product would take six to nine months, but then an additional three to five years would be necessary for a trainee to acquire specialized knowledge of the product, logistics and customer management to become autonomous.

The petitioner also provided a proposed organizational chart for the beneficiary's department, the logistics and warehouse management systems unit, which included another senior consultant (listed as the roll-out team leader and project manager) and a manager of senior consultants. Further, the organizational chart noted

that an additional project manager and two consultants would be hired for the project in the United States in 2013. Lastly, the petitioner provided a letter from United States client [REDACTED] noting the importance of the project to its operations and the transfer of [REDACTED] operations to the United States.

The director found the record insufficient to establish that the beneficiary's proposed position in the U.S. involved specialized knowledge. The director again reasoned that the beneficiary's duties were similar to those listed for a senior developer in the Department of Labor's Occupational Outlook Handbook (OOH), and therefore, that her knowledge is not established as sufficiently special or advanced.

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 beneficiary's knowledge of the company's [REDACTED] application is rare and that few can claim this advanced knowledge within the company. Further, counsel notes that the beneficiary has spent the last year analyzing, developing, customizing, coordinating, monitoring unique solutions for the petitioner's main U.S. client, [REDACTED]. Counsel asserts that the client needs the beneficiary's services as she is developing a unique system for the client using [REDACTED]. Additionally, counsel asserts that the beneficiary has unique experience in executing projects aboard and that the petitioner would suffer extreme economic hardship if the beneficiary is not transferred to the newly established petitioner.

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).

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 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 the 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 she possessed specialized knowledge. As such, it is difficult to now conclude that the beneficiary's role with the petitioner will involve specialized knowledge. As noted by the director, 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.

However, the petitioner submitted insufficient explanation and supporting documentation to compare the beneficiary's knowledge to that of her 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 senior consultants employed with the petitioner or the company's greater organization. In fact, the petitioner's organizational chart indicates another senior consultant will be working within the beneficiary's unit devoted to [REDACTED] and that this consultant will be the team leader of the project. However, the petitioner provided no explanation or evidence necessary to compare the beneficiary to her senior colleague and differentiate her knowledge from that of her peers. Further, although the petitioner provides a letter from the U.S. client attesting to a need for the petitioner's services, this letter makes no reference to the beneficiary to differentiate her from other consultants working for the company. 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).

On appeal, counsel asserts that knowledge need not be unique or proprietary in order to qualify a beneficiary as acting in a specialized knowledge capacity, relying on a policy memoranda issued by the former Immigration and Naturalization Service and USCIS." See James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum). However, although the AAO concurs that knowledge may be specialized by law and not proprietary, the AAO ultimately does not find counsel's argument persuasive. All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product alone 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 company or the industry. In fact, the AAO notes that the Puleo Memorandum referenced by counsel also states the following:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

*Id.* at page 4.

As such, requiring a petitioner to establish that a beneficiary's knowledge is unique as compared to his colleagues within, and outside, their organization is an accepted means of determining whether a beneficiary's knowledge of company processes and procedures is set apart from elementary or basic knowledge. 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. However, as explained above, the evidence submitted by the petitioner does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by others employed by the petitioning organization in similar roles or professionals employed elsewhere in the industry. Although the petitioner notes that the beneficiary already has a relationship with a client and that she has been working on this client's solution for the past year, holding a better understanding of a client's needs is not alone sufficient to establish specialized knowledge. The beneficiary's role is consistent with the petitioner's client relationship model whereby consultants work closely with clients to understand their specific needs and specially develop systems for clients. Indeed, the petitioner's resume confirms that there have been many client installations of [REDACTED] over more than ten years. Therefore, the AAO concludes it is likely that other consultants also became familiar with their client's needs during the many other [REDACTED] projects listed on the record. As such, familiarity with a client is not in itself unique or uncommon and would drastically stretch the definition of specialized knowledge beyond its intended boundaries. Also, the petitioner has not submitted any evidence to confirm that the other senior consultant assigned to the [REDACTED] who is the team leader, does not hold the same knowledge and familiarity with this client. Indeed, the support letter submitted in response to the director's RFE notes that "senior consultants staffing [the petitioner] in the United States must have "special, detailed, and unique knowledge of [REDACTED] to successfully perform their duties," suggesting that other consultants do, and will, hold an advanced level of knowledge similar to that of the beneficiary. Further, the petitioner's assertion that the beneficiary gained special knowledge through completing other implementations in other countries is also not convincing. Given the petitioner's business model, the AAO finds it likely that there are many other petitioner employees completing installations in foreign countries and that these employees also understand the logistics and processes involved in such a dynamic. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the record suggests that others hold this knowledge and the petitioner

failed to provide independent and objective evidence to sufficiently establish the beneficiary's knowledge is beyond that of other senior consultants working for the company and those similarly placed providing warehouse management systems software with the 92 other companies listed on the record 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. at 165.

Therefore, the petitioner has not established that the beneficiary will act in a specialized knowledge capacity with the petitioner. For this additional reason, the appeal must be dismissed.

#### IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.